

# EXHIBIT E

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

-----: PHILIP R. MCHUGH, :  
Plaintiff, :  
vs. : CASE NO.  
FIFTH THIRD BANCORP, et : 1:21-cv-00238  
al., :  
Defendants. :  
-----:

Videotaped  
Deposition of: EILEEN A. MALLE SCH

Taken: By the Plaintiff

Pursuant to Notice

Date: July 10, 2024

Time: Commencing at 9:53 a.m.

Place: Fifth Third Center  
511 Walnut Street  
Cincinnati, Ohio 45202

Before: Pamela L. Jackson  
and  
Connie Adkins-Ihle,  
Videographer  
Notaries Public-State of Ohio

## 1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Peter A. Saba, Esq.  
4 Joshua M. Smith, Esq.  
and  
5 Bailey E. Sharpe, Esq. (Via Videoconference)  
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10 On behalf of the Defendants and the Deponent:

11 Michael L. Cioffi, Esq.  
12 and  
13 Collin D. Hart, Esq.  
of  
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18 Also Present:

19 Philip R. McHugh  
20 Phenise Poole, Esq., Fifth Third Bancorp  
Brian Thomas, Esq., Fifth Third Bancorp

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<p>1           THE VIDEOGRAPHER: We're on      2 videotape record. Today is Wednesday, July      3 the 10th, 2024. The time is 9:53 a.m. We're      4 here today to take the deposition of Eileen      5 A. Mallesch in the case styled Philip R.      6 McHugh versus Fifth Third Bancorp, et al.,      7 United States District Court, Southern      8 District of Ohio, Western Division, Case No.      9 1:21-cv-00238.</p> <p>10         Would the attorneys now introduce      11 themselves and say who you represent?</p> <p>12         MR. SABA: Peter Saba for the      13 Plaintiff, Philip R. McHugh.</p> <p>14         MR. SMITH: Joshua Smith for the      15 Plaintiff, Phil R. McHugh.</p> <p>16         MR. CIOFFI: Michael Cioffi and      17 Collin Hart of Blank Rome on behalf of the      18 Defendants. We also represent Eileen      19 Mallesch, the witness, personally pursuant to      20 a joint representation agreement. Also      21 representing the Defendants are Brian Thomas      22 and Phenise Poole.</p> <p>23         THE VIDEOGRAPHER: Would the court      24 reporter please swear in the witness?</p>	<p>Page 4</p> <p>1           then she's within -- she's -- she's a lawyer,      2 paralegal, in your office?</p> <p>3          MR. SABA: Lawyer in my office,      4 correct.</p> <p>5          MR. CIOFFI: Okay. So as you know      6 there is some confidential information you      7 may or may not use. I just want to make sure      8 no one else who's not within that privilege      9 will not see or listen to those questions,      10 No. 1. No. 2, is it my understanding -- is      11 my understanding correct that this is also      12 being recorded somehow on Zoom?</p> <p>13          MR. SABA: That I don't know.</p> <p>14          MR. CIOFFI: Is the -- Do you know?</p> <p>15          THE VIDEOGRAPHER: From what I      16 understand.</p> <p>17          THE REPORTER: I didn't know it was      18 and I tried to get ahold of Wendy and I'm not      19 able to, but she's the host so I can't cancel      20 it, the recording.</p> <p>21          MR. CIOFFI: I just want to make      22 the record clear that there's only one      23 official video of this and it's by this      24 particular videographer and we'll ask you to      25 deliver your video to us, and in this day and</p>
<p>1           EILEEN A. MALLE SCH      2 of lawful age, a witness herein, being first duly      3 sworn as hereinafter certified, was examined and      4 deposed as follows:</p> <p>5           EXAMINATION</p> <p>6 BY MR. SABA:</p> <p>7          Q      Ms. Mallesch, can you go ahead and      8 state your name for the record, please, and spell your      9 last name?</p> <p>10         A      <b>Eileen Ann Mallesch,</b>      11 <b>M-a-l-l-e-s-c-h.</b></p> <p>12         Q      Have you ever had your deposition      13 taken before?</p> <p>14         A      <b>No.</b></p> <p>15         MR. CIOFFI: Hey, Counsel, one --      16 one more thing for the record before you get      17 into your questioning. It's my understanding      18 that this is being broadcast simultaneously      19 on Zoom; is that correct?</p> <p>20         MR. SABA: That's my understanding.</p> <p>21         MR. CIOFFI: And who is watching      22 it?</p> <p>23         MR. SABA: Just Bailey A. Warden      24 from our office.</p> <p>25         MR. CIOFFI: If she's the only one</p>	<p>Page 5</p> <p>1           age as you know, you know, video media can be      2 manipulated so we want to make sure that this      3 is -- everyone agrees that this is the      4 official video of the deposition?</p> <p>5          MR. SABA: We agree.</p> <p>6          MR. CIOFFI: All right. Thank you.</p> <p>7 BY MR. SABA:</p> <p>8          Q      Ms. Mallesch, I am going to be      9 asking you a series of questions today. If there's      10 anything you don't hear or don't understand please      11 feel free to ask me to repeat or rephrase the      12 question. For the sake of the court reporter,      13 notwithstanding that this is being taken via video, I      14 do need you to answer verbally, no shaking or nodding      15 of the head or unh-unhs or uh-huhs. It's difficult to      16 take that down for the record.</p> <p>17         A      <b>I understand.</b></p> <p>18         Q      Additionally if you could wait for      19 me to finish my question before you answer and I'll      20 try and do the same before I ask another question and      21 it also makes for a clearer record. Do you understand      22 all those instructions?</p> <p>23         A      <b>I do.</b></p> <p>24         Q      Can you go ahead and give me your      25 address, please?</p>

	Page 8		Page 10
1	A <b>1217 Sanctuary Place, Gahanna,</b>	1	Instruct her not to answer.
2	<b>Ohio, 43230.</b>	2	BY MR. SABA:
3	Q How long have you lived there?	3	Q Have you reviewed the video or
4	A <b>18 years.</b>	4	transcript of Marsha Williams' deposition?
5	Q Who do you live there with?	5	MR. CIOFFI: Same objection.
6	A <b>My husband.</b>	6	Instruct her not to answer.
7	Q How long have you been married?	7	BY MR. SABA:
8	A <b>23 years.</b>	8	Q Have you reviewed the video or
9	Q What's the extent of your	9	transcript of Nicholas Akins' deposition?
10	education?	10	MR. CIOFFI: Same objection.
11	A <b>Bachelor's Degree -- Bachelor of</b>	11	Instruct her not to answer.
12	<b>Science Degree in Accounting.</b>	12	BY MR. SABA:
13	Q When did you receive that?	13	Q Have you reviewed the video or
14	A <b>1985.</b>	14	transcript of Greg Carmichael's deposition?
15	Q Where did you receive that from?	15	MR. CIOFFI: Same objection.
16	A <b>City University of New York,</b>	16	Instruct her not to answer.
17	<b>Herbert H. Lehman College.</b>	17	BY MR. SABA:
18	Q The litigation that brings us here	18	Q Was there any testimony in
19	today have you discussed this litigation with any of	19	Mr. McCallister's deposition that you disagree with?
20	the other board members from Fifth Third Bank?	20	MR. CIOFFI: Same objection.
21	A <b>No.</b>	21	Instruct her not to answer.
22	Q Have you discussed this litigation	22	(Deposition Exhibit 1 was marked
23	with any of the employees of Fifth Third Bank?	23	for identification.)
24	A <b>No.</b>	24	BY MR. SABA:
25	Q Have you reviewed the video or	25	Q Ms. Mallesch, I'm handing you
	Page 9		Page 11
1	transcript of Michael McCallister's deposition?	1	what's been marked as Exhibit No. 1 which is the
2	MR. CIOFFI: Objection. Whatever	2	Amended Notice for your deposition today and a
3	this witness has viewed she viewed at my	3	Request For Production Of Documents. Have you ever
4	request as her counsel. It, therefore,	4	seen Exhibit 1 before?
5	reflects my attorney-client judgment as to	5	A <b>Yes.</b>
6	what she should or should not review and is	6	Q Do you have any documents with you
7	privileged, so I'm going to instruct her not	7	today?
8	to answer that. I'll allow her to answer if	8	A <b>No.</b>
9	she's -- she's reviewed any material other	9	MR. CIOFFI: Counsel, I'll say on
10	than the material I directed her to review.	10	the record as I have in other depositions
11	BY MR. SABA:	11	when you have asked this question and showed
12	Q Other than Mr. Cioffi's instruction	12	a similar Notice that to the extent these
13	to review Mr. McCallister's video or transcript have	13	documents exist and are within the custody
14	you -- have you reviewed Mr. McCallister's video or	14	and control of Fifth Third they have been
15	transcript?	15	produced. You may continue.
16	MR. CIOFFI: Just so the record's	16	BY MR. SABA:
17	clear I didn't say I directed her to review	17	Q Ms. Mallesch, I am going to refer
18	that transcript. I did instruct her to	18	you to Page 6 of Exhibit No. 1 --
19	review a lot of material and again all of	19	A <b>Yes.</b>
20	that's protected by the attorney-client	20	Q -- and in the middle of the page
21	privilege.	21	No. 14 there's a definition for the words
22	BY MR. SABA:	22	"Communications" or "Communicate" -- Do you see that?
23	Q Have you reviewed or -- the video	23	A <b>I do.</b>
24	or read the transcript of Gary Heminger's deposition?	24	Q And that reads, "The words
25	MR. CIOFFI: Same objection.	25	'Communications' or 'Communicate' mean any

<p style="text-align: right;">Page 12</p> <p>1 correspondence, disclosure, transfer or exchange of      2 information, whether oral or written, and whether in      3 person, by telephone, mail, email, telecopy, text      4 message, or other 'Document' form, including but not      5 limited to discussions, statements, negotiations,      6 inquiries, requests, notices, responses, or demands"</p> <p>-- Do you see that?</p> <p><b>A I do.</b></p> <p>Q Do you understand that definition?</p> <p><b>A I do.</b></p> <p>Q The first request asked for, "Communications between You and any other Director or Officer of Fifth Third which refers to, mentions, or otherwise relates to: Succession planning for the position of President and/or CEO of Fifth Third Bank." Do you have any documents responsive to that request?</p> <p><b>A No.</b></p> <p>Q 1(b) asks for, "Communications identified and/or selected candidates for the position of President and/or CEO of Fifth Third." Do you have any documents responsive to that request?</p> <p><b>A No.</b></p> <p>Q 1(c) asks for, "Processes or timelines, whether proposed or final, with respect to the identification and/or selection of candidates for</p>	<p style="text-align: right;">Page 14</p> <p>1 Q No. 2 asks for, "Any Communications      2 between You and Philip McHugh." Do you have any      3 documents responsive to that request?</p> <p><b>A No.</b></p> <p>Q Request 3 asks for, "Any Communication between You and Tim Spence." Do you have any documents responsive to that request?</p> <p><b>A No.</b></p> <p>Q No. 4 asks for, "All Documents created, received, or obtained by You which refer, mention, or otherwise relate to," and under 4(a) it says, "Succession planning for the position of President and/or CEO of Fifth Third." Do you have any documents responsive to that request?</p> <p><b>A No.</b></p> <p>Q 4(b) asks for, "Identified and/or selected candidates for the position of President and/or CEO of Fifth Third." Do you have any documents responsive to that request?</p> <p><b>A No.</b></p> <p>Q 4(c) asks for, "Processes or timelines, whether proposed or final, with respect to the identification and/or selection of candidates for the position of President and/or CEO of Fifth Third." Do you have any documents responded to that --</p>
<p style="text-align: right;">Page 13</p> <p>1 the position of President and/or CEO of Fifth Third      2 Bank." Do you have any documents responsive to that      3 request?</p> <p><b>A No.</b></p> <p>Q 1(d) requests, "Development of potential candidates for the position of President and/or CEO of Fifth Third." Do you have any documents responsive to that request?</p> <p><b>A No.</b></p> <p>Q 1(e) asks for, "Any facts upon which you or any other Director relied upon when identifying and/or selecting candidates for the position of President and/or CEO of Fifth Third Bank." Do you have any documents responsive to that request?</p> <p><b>A No.</b></p> <p>Q 1(f) asks for with respect to Phil McHugh in terms of communications between you and any board members. Do you have any documents responsive to that request?</p> <p><b>A No.</b></p> <p>Q 1(g) asks for communications between you and any other board member regarding Timothy Spence. Do you have any documents responsive to that request?</p> <p><b>A No.</b></p>	<p style="text-align: right;">Page 15</p> <p>1 responsive to that request?</p> <p><b>A No.</b></p> <p>Q 1(d) -- Excuse me -- 4(d) asks for, "Development of potential candidates for the position of President and/or CEO of Fifth Third." Do you have any documents pursuant to that request?</p> <p><b>A No.</b></p> <p>Q 4(e) asks for, "Any facts upon which You or any other Director relied upon when identifying and/or selecting candidates for the position of President and/or CEO of Fifth Third." Do you have any documents responsive to 4(e)?</p> <p><b>A No.</b></p> <p>Q 4(f) refers to Philip McHugh. Do you have any documents responsive to 4(f)?</p> <p><b>A No.</b></p> <p>Q And 4(g) asks for Timothy Spence. Do you have any documents responsive to 4(g)?</p> <p><b>A No.</b></p> <p>Q Are you currently employed?</p> <p><b>No. I'm retired.</b></p> <p>Q Where did you last work?</p> <p><b>Nationwide Insurance.</b></p> <p>Q When did you last work for Nationwide Insurance?</p>

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1	<b>A      Retired the end of 20 -- 2009 to effective first day of 2010.</b>	1	<b>Columbus College of Art &amp; Design.</b> I was previously on that board as well and other nonprofits throughout my career.
2	Q      What was the last position you held with Nationwide Insurance?	2	Q      When were you on the board of Columbus College of Art & Design?
3	<b>A      Chief Financial Officer of the Property/Casualty Insurance Segment.</b>	3	<b>A      I believe that started in 2010 or '11 and I stepped off that when I was -- other boards were conflicting with it around 2019-ish.</b>
4	Q      Have you ever been the President or CEO of a publicly traded company?	4	Q      Any other nonprofit boards that you served on during the time period of September of 2016 through October, 2020?
5	<b>A      No.</b>	5	<b>A      No.</b>
6	Q      Do you sit on any boards currently?	6	Q      Who first contacted you about joining the board at Fifth Third?
7	<b>A      I do.</b>	7	<b>A      A recruiting firm connected with me and then it was Marsha Williams and Greg Carmichael as board members of Fifth Third.</b>
8	Q      Which boards do you currently sit on?	8	Q      When were you first contacted about joining the board of Fifth Third?
9	<b>A      Sit on Brighthouse Financial and I sit on Arch Capital Group, both public companies, in addition to Fifth Third, of course.</b>	9	<b>A      Oh, let's see now, if I joined in '16 -- It was beginning of -- beginning of '16. It took a few months to go through the process, so probably mid '16 sometime.</b>
10	Q      How long have you been on the board of Brighthouse Financial?	10	Q      What do you mean by it took a few months to go through the process?
11	<b>A      Since 20 -- let's see, 2018.</b>	11	<b>A      The most humbling thing of when you transition your career to serving on public boards is it's not -- it doesn't move as quickly as when you're on the management side of the table. It typically takes a long process because of the importance of the role of a public board member that they want to ensure that no matter what your background as you will add value on the two most important roles of a board of director which is CEO succession as well as oversight of the strategy.</b>
12	Q      How long have you been on the board of Arch Capital Group?	12	Q      And what specifically was done to make sure that you could add to the processes of CEO succession and oversight of the strategy?
13	<b>A      Since 2021.</b>	13	<b>A      Well, as a public company CFO you partner deeply with the CEO and it's always about the strategy and over a course of my CFO roles, prior ones as well with GE and Genworth as a CFO, I had strategy as oversight as I did at Nationwide Insurance. I was the one that developed a strategy leader for the Property/Casualty Team there and hired in an individual from Mackenzie to be the strategy leader, not unlike what Greg Carmichael did in bringing Tim Spence in from Oliver Wyman.</b>
14	Q      When did you first join the board of Fifth Third?	14	Q      What specifically was done to determine that you were in line or added value with
15	<b>A      2016, September.</b>	15	
	Page 17		Page 19
1	Q      Between September of 2016 and October of 2020 did you sit on any other boards that you have not identified today?	1	
2	<b>A      Yes.</b>	2	
3	Q      Upon which boards did you sit?	3	
4	<b>A      I was sitting on Bob Evans Farms.</b>	4	
5	Q      When were you on the Bob Evans' board?	5	
6	<b>A      I joined that board in 2008 and based off of an M&amp;A transaction stepped off in 2018. It was 10 years.</b>	6	
7	Q      Any other boards?	7	
8	<b>A      Yes, State Auto Financial.</b>	8	
9	Q      And when were you a board member of State Auto Financial?	9	
10	<b>A      Starting 2010 and stepped off that board in 2021.</b>	10	
11	Q      Any others?	11	
12	<b>A      Libbey Glass.</b>	12	
13	Q      When were you a board member of Libbey Glass?	13	
14	<b>A      That was 2016 until 2020 when COVID hit the -- that sector and was restructured.</b>	14	
15	Q      Any other boards?	15	
16	<b>A      No, other than nonprofit boards,</b>	16	

<p>1 respect to CEO succession and oversight strategy at 2 Fifth Third?</p> <p>3       <b>A It's just part of your business 4 judgment and your experience and where you're bringing 5 your wisdom from your years of experience.</b></p> <p>6       <b>Q Is there an onboarding process for 7 individuals that become members of the board at 8 Fifth Third Bank?</b></p> <p>9       <b>A Great question. In fact, every one 10 of the boards that I just referenced I'm a 11 National Association of Corporate Directors member and 12 they are continually doing training and discussions 13 around all the roles of a board member, so 14 Fifth Third, for example, provides that membership 15 with National Association of Corporate Directors. I 16 go annually to their global summit where I sit with a 17 non-governance, for example, our Audit Committee as an 18 Audit Committee Chair for one of the most current 19 trends, so you are constantly getting continual 20 education similar to what I do as a CPA in getting 21 continuing professional education credits there as 22 well.</b></p> <p>23       <b>Q My question specifically what does 24 Fifth Third Bank do with respect to onboarding its new 25 board members?</b></p>	<p style="text-align: right;">Page 20</p> <p>1       <b>so it's not just learning about the business which 2 they're helping the new director understand 3 Fifth Third. You're starting to build your -- your 4 foundation as a public company director in assessing 5 the talent and capability of each leader.</b></p> <p>6       <b>Q How many different Enterprise 7 Committee members did you meet with?</b></p> <p>8       <b>A I cannot recall right now to be 9 honest with you. I don't remember off the top of my 10 head. But it's typically each of the functions, 11 operational, finance, risk, legal. You're meeting 12 with each of the key functions and operational 13 leaders.</b></p> <p>14       <b>Q When did those meetings take 15 place?</b></p> <p>16       <b>A It's -- It occurs initially over a 17 couple of days. You're brought into Fifth Third to 18 just meet with folks to kick off the orientation and 19 then based on each person's background -- Like for 20 myself I -- by being a finance executive I will spend 21 extra time with the finance leaders as well as with 22 the risk leaders just to ensure I'm understanding the 23 uniqueness of the business as I'm evaluating the 24 financial performance.</b></p> <p>25       <b>Q Do you recall who you specifically</b></p>
<p>1       <b>A Oh, well, you're onboarding as well 2 as equally robust in how you meet with each of the 3 leaders and you are taken through the business and 4 then you are equally onboard for the regulatory 5 element of Fifth Third which is quite significant as 6 you know in the banking sector, and all that plays 7 into how you want to evaluate CEO succession too.</b></p> <p>8       <b>Q And so you said you meet with each 9 of the leaders?</b></p> <p>10      <b>A Yes.</b></p> <p>11      <b>Q Which leaders? Who are you 12 referring to?</b></p> <p>13      <b>A Anyone that's in the Enterprise 14 Committee at that time because that moves depending on 15 the point in time you're asking the question. Back in 16 2016 you would have to look up who were the Enterprise 17 Committee leaders at that point in time.</b></p> <p>18      <b>Q And what is the nature of that 19 meeting that you had with Enterprise Committee 20 members?</b></p> <p>21      <b>A You're starting your most important 22 role as a public company director and gaining an 23 understanding of the strengths and capabilities of 24 each of the leaders, so you're seeing how well they 25 can articulate their business, what's their strategy,</b></p>	<p style="text-align: right;">Page 21</p> <p>1       met with with respect to the financial time -- 2 financial side?</p> <p>3       <b>A No.</b></p> <p>4           <b>MR. CIOFFI: Objection, asked and 5 answered, but --</b></p> <p>6           <b>BY MR. CIOFFI:</b></p> <p>7           <b>Q What about with respect to the risk 8 side, who did you meet with?</b></p> <p>9           <b>MR. CIOFFI: Same objection. You 10 may answer if you can.</b></p> <p>11      <b>A Yeah, that was Frank Forrest at the 12 time, so I do remember him.</b></p> <p>13      <b>Q And how much time did you spend 14 meeting with Mr. Forrest?</b></p> <p>15      <b>A Well, again at least an hour, a 16 couple of hours, with each person.</b></p> <p>17      <b>Q When you say a couple hours how 18 many hours is that?</b></p> <p>19      <b>A Anywhere from an hour to two hours.</b></p> <p>20      <b>Q Did you meet with Phil McHugh?</b></p> <p>21      <b>A I don't recall.</b></p> <p>22      <b>Q Did you meet with Tim Spence?</b></p> <p>23      <b>A Yes.</b></p> <p>24      <b>Q Who determined who you would meet 25 with?</b></p>

<p>1       <b>A     Legal team as part of where they</b>  2 <b>administratively oversee onboarding new directors.</b></p> <p>3       Q     How much time did you spend meeting  4     with Mr. Spence?</p> <p>5       <b>A     I think it was about an hour.</b></p> <p>6       Q     Did you keep notes from that  7     meeting?</p> <p>8       <b>A     No. They provide the materials and</b>  9 <b>it's really asking questions off the materials</b>  10 <b>provided to help onboard you.</b></p> <p>11      Q     What were the nature of the  12     materials that they provided you?</p> <p>13      <b>A     I am not going to recall all the</b>  14 <b>details in each of the materials, but it follows that</b>  15 <b>Tim Spence would be strategy, Frank Forrest would be</b>  16 <b>risk, legal would be governance and regulation, so I</b>  17 <b>don't recall the exact specifics.</b></p> <p>18      Q     If you first came on in September  19     of 2016 how long after were these meetings that you  20     would have had with different representatives of the  21     Enterprise Committee?</p> <p>22      <b>A     Can you repeat that question?</b></p> <p>23      Q     Yes. If -- Relative to your start  24     date as a board member in September of 2016 when would  25     these meetings have taken place?</p>	<p>Page 24</p> <p>1       Q     -- that you met with?</p> <p>2       <b>A     Tayfun, the CFO, Mark Hazel, the</b>  3 <b>Controller at the time. I'm horrible with names</b>  4 <b>because the person's gone, so whomever was meeting</b>  5 <b>legal because they were going through a lot of</b>  6 <b>transition at that point. And then the operation</b>  7 <b>folks because I'm bad with names I would have to look</b>  8 <b>at an enterprise chart to share with you at that point</b>  9 <b>in time who else I met with.</b></p> <p>10      Q     As a board member of Fifth Third  11     what was your understanding of your role with respect  12     to President and CEO succession?</p> <p>13      <b>A     I -- Can you just phrase that</b>  14 <b>question one more time, please?</b></p> <p>15      Q     Sure. As a board member of  16     Fifth Third what was your understanding of your role  17     with respect to President and CEO succession?</p> <p>18      <b>A     So in order to properly respond to</b>  19 <b>that by virtue of all the public company boards I</b>  20 <b>listed that I serve on you should know that I have</b>  21 <b>served on CEO transition of five out of those six</b>  22 <b>boards, and I do not think of one particular company's</b>  23 <b>basis for how I think of CEO succession. I view it as</b>  24 <b>the most critical role of a board director is CEO</b>  25 <b>succession and the strategic oversight, so it's truly</b></p>
<p>1       <b>A     I think I already answered that,</b>  2 <b>but it would be within -- before the first board</b>  3 <b>meeting you're already meeting with folks as soon as</b>  4 <b>you're brought on board, so it's within a month or two</b>  5 <b>of you're sworn in as a board member.</b></p> <p>6       Q     Okay. The first board meeting that  7     there's a record of you attending is in September  8     of --</p> <p>9       <b>A     Yes.</b></p> <p>10      Q     -- 2016. Do you recall if those  11     meetings were prior to that board meeting?</p> <p>12      <b>A     Yes.</b></p> <p>13      Q     As you sit here today do you recall  14     how long prior to that board meeting that these  15     meetings took place?</p> <p>16      <b>A     It was around that board meeting.</b></p> <p>17      Q     Other than meeting with some of the  18     members of the Enterprise Committee what else was  19     involved in the onboarding process for you to become a  20     board member of Fifth Third?</p> <p>21      <b>A     That's it.</b></p> <p>22      Q     As you sit here today other than  23     Mr. Spence and Frank Forrest do you recall the names  24     of any other enterprise board members --</p> <p>25      <b>A     I do.</b></p>	<p>Page 25</p> <p>1       assessing, just always assessing in every interaction  2     I have with each of the leaders. To your good point  3     on starting on Day 1 when it's onboarding, that's like  4     I'm starting to assess the capabilities of each leader  5     so I can provide credible challenge back to management  6     as management is asking questions and have a view of  7     who might be potential CEO successors, so it's not  8     unique to Fifth Third. I'd have that process with  9     every public company board I serve on.</p> <p>10      Q     And specific to Fifth Third you  11     referred to with respect to your interaction with each  12     of the leaders you're assessing whether or not they  13     have the capabilities --</p> <p>14      <b>A     Correct.</b></p> <p>15      Q     -- to be a President and CEO?</p> <p>16      With respect to Fifth Third in  17     particular who are the leaders you're referring to?</p> <p>18      <b>A     When I come in as a new board</b>  19 <b>member it can be any leader and I do not bias which</b>  20 <b>leader it would be. It's based off of the</b>  21 <b>interactions and observing the capabilities of each of</b>  22 <b>the leaders.</b></p> <p>23      Q     Is Phil McHugh included in the  24     description of the leaders that you would be assessing  25     with respect to having the capabilities to be a CEO or</p>

	Page 28		Page 30
1	President of Fifth Third Bank?	1	annually as a board looking at each of the executives'
2	<b>A He was.</b>	2	performance as prepared by the CEO? Is that what
3	Q And when did that assessment	3	you're referencing?
4	process begin?	4	Q I am specifically asking for did
5	<b>A Again Day 1 and whenever I started</b>	5	you review any of the documentation that were from the
6	<b>to interact so -- because I couldn't remember what</b>	6	annual reviews that were done of Phil McHugh from his
7	<b>operation leaders would be there -- whenever I saw</b>	7	immediate supervisor?
8	<b>Phil at a board meeting or interacted with him at a</b>	8	<b>A No, unless you're referencing what</b>
9	<b>board dinner.</b>	9	<b>we look at as succession planning.</b>
10	Q Other than interactions at a board	10	Q Okay. You're -- You're referring
11	meeting or board dinner what other interactions did	11	to something called the talent deck?
12	you have with Phil McHugh in order to assess him for	12	<b>A Yes.</b>
13	the roles of President and/or CEO of Fifth Third Bank?	13	Q Have you ever heard that phrase?
14	<b>A I would just get in a cocktail hour</b>	14	<b>A Yes.</b>
15	<b>in between -- between the board meeting and the board</b>	15	Q Is that correct?
16	<b>dinner.</b>	16	All right. And just to be clear
17	Q Anything else?	17	that -- the talent deck is something the board would
18	<b>A No.</b>	18	review at December meetings --
19	Q Did you ever observe Phil McHugh in	19	<b>A Correct.</b>
20	the workplace?	20	Q -- each year; is that right?
21	<b>A I'm not understanding your</b>	21	Okay. And so the talent deck would
22	<b>question.</b>	22	be a document that you would review as part of your
23	Q Did you ever observe Phil McHugh at	23	assessment of an individual to be a President or CEO
24	work at Fifth Third Bank?	24	at Fifth Third Bank; is that right?
25	<b>A No, other than a board meeting</b>	25	<b>A No.</b>
	Page 29		Page 31
1	<b>which is work.</b>	1	Q That would not be?
2	Q Outside of the board meeting?	2	<b>A No.</b>
3	<b>A No.</b>	3	Q What would you use the talent deck
4	Q Did -- Do you have a recollection	4	for?
5	of what Phil McHugh's role was when you came on in	5	<b>A I would look at the talent deck</b>
6	September of 2016?	6	<b>even in my assessment of the existing CEO's</b>
7	<b>A Retail Consumer Bank, something</b>	7	<b>capabilities of how you're evaluating talent because</b>
8	<b>along those lines, because the segments had been</b>	8	<b>that's the opinion of management when I review that.</b>
9	<b>realigned so you'll have to forgive me if I can't</b>	9	I immediately look at it to see if it's lining up to
10	<b>recall the exact title. We now just have three</b>	10	how I'm thinking about the individual and then during
11	<b>segments for commercial, consumer, and retail banking</b>	11	the discussion I provide credible challenge to ask
12	<b>and WAM, and those are the ones I focus on as I'm</b>	12	where I don't agree necessarily with what's on the
13	<b>reviewing current financials, so something within the</b>	13	page and that's again part of the role of a board of
14	<b>consumer -- and he had WAM too as an element.</b>	14	director.
15	Q Did you ever meet with or interview	15	Q Did you ever review any of
16	any of Phil McHugh's direct reports?	16	Phil McHugh's employee engagement surveys?
17	<b>A No.</b>	17	<b>A No.</b>
18	Q Did you ever participate in or	18	Q Did you ever review any of
19	perform any of Phil McHugh's annual reviews or	19	Phil McHugh's customer experience surveys?
20	mid-year reviews?	20	<b>A No.</b>
21	<b>A No.</b>	21	Q Did you ever review the financial
22	Q Did you review any of the	22	performance relative to the goals for Phil McHugh's
23	documentation from Phil McHugh's annual reviews?	23	divisions?
24	<b>A Expand your question to make sure</b>	24	<b>A Yes.</b>
25	<b>I'm answering. Are you referencing what we do</b>	25	Q And when did you review those?

<p>1       <b>A      When he presents them at the board</b>  2      <b>meetings.</b></p> <p>3       Q      Okay. And what -- what  4      specifically was presented at the board meetings?</p> <p>5       <b>A      He presented a summary of his line</b>  6      <b>of business operations.</b></p> <p>7       Q      Okay. And what is your  8      recollection of what he provided?</p> <p>9       <b>A      Performance of his area at that</b>  10     <b>point in time.</b></p> <p>11      Q      And was there anything that you  12     were critical of with respect to the financial  13     performance of the areas that were managed by  14     Phil McHugh?</p> <p>15      <b>A      I was in listen mode only. When</b>  16     <b>you talk in executive session is when we talk about</b>  17     <b>how we felt certain leaders performed during their</b>  18     <b>presentation.</b></p> <p>19      Q      With respect to the financial  20     performance of the divisions managed by Phil McHugh  21     were there any criticisms of the financial performance  22     of the divisions managed by Phil McHugh?</p> <p>23      <b>A      No, because again I am audit chair</b>  24     <b>and I look at the financial statements for the</b>  25     <b>segments. He's reflecting only a management report</b></p>	<p>Page 32</p> <p>1       It's either at a board meeting where they may have  2      presented, at a dinner that they may have attended, or  3      at a cocktail party in between the dinner and a board  4      meeting --</p> <p>5       <b>A      Correct.</b></p> <p>6       Q      -- is that right?</p> <p>7       Do you recall specifically how many  8      times you observed Phil McHugh at a board meeting?</p> <p>9       <b>A      I don't believe he presented at</b>  10     <b>every single meeting, so you would have to shave off a</b>  11     <b>couple, but if you just do 5 meetings a year times 4</b>  12     <b>from the '16 to '19 point we're talking here or mid</b>  13     <b>'20, 2020, I mean they can just do the math on that,</b>  14     <b>and that's how many times I interacted with Phil as a</b>  15     <b>board member observing his presentation.</b></p> <p>16      Q      Okay. So -- And that's if he would  17     have attended every meeting?</p> <p>18      <b>A      If he was at every meeting because</b>  19     <b>sometimes he was not there.</b></p> <p>20      Q      Correct. So it would be a maximum  21     of 20 interactions --</p> <p>22      <b>A      Yes.</b></p> <p>23      Q      -- over a four-year period --</p> <p>24      <b>A      Yeah.</b></p> <p>25      Q      -- is that correct?</p>
<p>1       <b>that does not necessarily tie to the financial</b>  2      <b>statements, so that's a limited view of the total</b>  3      <b>financial story of Fifth Third Bank, so I'm just</b>  4      <b>gaining a better understanding so I can ask questions</b>  5      <b>when I see the total rollup if it's consistent to what</b>  6      <b>Phil may have said in a board meeting to how the</b>  7      <b>finance team is reflecting the financial result in a</b>  8      <b>10-Q or a 10-K.</b></p> <p>9       Q      Other than a more global view that  10     you're taking with respect to what the financial  11     rollup is --</p> <p>12      <b>A      Uh-huh.</b></p> <p>13      Q      -- are you assessing any candidates  14     based on their specific divisions of the bank and the  15     financial performance of those divisions?</p> <p>16      <b>A      Always.</b></p> <p>17      Q      And what are you using to do that?</p> <p>18      <b>A      In part their presentation at a</b>  19     <b>board meeting and then all of their capabilities</b>  20     <b>associated with communicating what's performing at the</b>  21     <b>-- at their particular line of business so their</b>  22     <b>communication skills in addition to what they're</b>  23     <b>showing as the results.</b></p> <p>24      Q      And your only observation or  25     communication skills is what you indicated before --</p>	<p>Page 33</p> <p>1       <b>A      Yes.</b></p> <p>2       Q      Did you ever make a determination  3      that Phil McHugh was not a suitable candidate for  4      either President or CEO at Fifth Third Bank?</p> <p>5       <b>A      I never saw him as a candidate for</b>  6      <b>CEO succession at a certain point during my time</b>  7      <b>interacting with Phil.</b></p> <p>8       Q      And at what point in time did you  9      determine that he was not a candidate for President or  10     CEO of Fifth Third Bank?</p> <p>11      <b>A      The better way to -- to -- for me</b>  12     <b>to answer that is that I just stopped putting my</b>  13     <b>energy and focus on the person who's exhibiting the</b>  14     <b>highest potential, and so let me just pause and give</b>  15     <b>you a full quadrant view of how I think about this.</b>  16     <b>I'm always looking at every leader as having either</b>  17     <b>oversight, hindsight, foresight, or insight.</b></p> <p>18      <b>Oversight and hindsight is a traditional leader who</b>  19     <b>nuts and bolts very valuable for the organization but</b>  20     <b>not strategic. I look at a strategic leader with over</b>  21     <b>-- with insight and foresight.</b></p> <p>22      <b>Phil is a traditional banker with</b>  23     <b>deep Fifth Third internal knowledge for many years,</b>  24     <b>but in any of the board presentations I observed he</b>  25     <b>did not exhibit any strategic perspective. He really</b></p>

1 just was giving -- reading off the slide, telling us  
 2 what occurred in the business, not really giving us  
 3 insight as to what is it that he was seeing based off  
 4 of what's occurred, and it -- really we're all assumed  
 5 to have read the slide so he needs to come in and  
 6 really just make it a dialogue and give us some color  
 7 to help bring that page alive even further than we --  
 8 what we read on data on a pre-read of what is a  
 9 performance review effectively.

10 Q So with respect to that did you  
 11 make that determination after the first presentation  
 12 made by Phil McHugh?

13 A No. I always give someone for  
 14 additional opportunity because you have a bad day. It  
 15 was just his personal style.

16 Q Okay. And how many -- how many  
 17 opportunities did you give Phil McHugh before you  
 18 determined that he was not a suitable candidate for  
 19 President or CEO of Fifth Third Bank?

20 A I would say of the 20 that --  
 21 number that you estimated I was about around 10 I was  
 22 already making that decision.

23 Q And that's assuming you had 10  
 24 interactions with him over that time period; is that  
 25 correct?

1 A Yes.

2 Q Ms. Mallesch, how many board  
 3 meetings did you attend in 2016?

4 A Well, in 2016 I would have just  
 5 joined that board so that's September and then we  
 6 would have had a December meeting, so really it was  
 7 only a partial year.

8 Q And do you recall if you had any  
 9 interactions with Phil McHugh during those?

10 A I -- Frankly it's a blur when  
 11 you're starting to meet people for the first time, so  
 12 I do not remember.

13 Q And with respect to the meetings  
 14 where Phil McHugh was in attendance did you interact  
 15 with him at each of those meetings?

16 A Not an interaction. He would come  
 17 in and folks would say "hello" to each other, but that  
 18 would be it.

19 Q So at these meetings you wouldn't  
 20 necessarily be having a conversation with him at  
 21 dinner or at the cocktail party; is that correct?

22 A I only recall one dinner where we  
 23 sat next to each other and really talked at length.

24 Q When was that dinner?

25 A One of the last dinners Phil was

1 there quite frankly. It was either in late '19 or mid  
 2 2020. I don't remember which one.

3 Q By that point in time had you  
 4 already determined that Phil McHugh was not a suitable  
 5 candidate to be the next President and CEO of  
 6 Fifth Third Bank?

7 A Yes, because we were already well  
 8 down the path of watching Tim Spence develop as the  
 9 future CEO.

10 Q You said you were already well down  
 11 the path of watching Tim Spence becoming next  
 12 President and CEO of Fifth Third Bank. When did that  
 13 path begin?

14 MR. CIOFFI: Objection to the form  
 15 of the question. It misstates her prior  
 16 testimony. If you can answer you may answer.

17 A Repeat the question.

18 Q Sure. You indicated that, "We were  
 19 already well down the path of determining that Fifth  
 20 -- that Tim Spence would be the next President and CEO  
 21 of Fifth Third Bank." My focus is really on your  
 22 reference to the path with respect to Tim Spence.  
 23 When did that path begin?

24 MR. CIOFFI: It's the same  
 25 objection.

1 A Again my path is what I shared with  
 2 you, so if we did 20 meetings and I said into No. 10 I  
 3 didn't see Phil as a CEO successor the logical  
 4 follow-through is that I was seeing another internal  
 5 candidate, so I was already watching. This would be  
 6 where we're in executive session as a board and I  
 7 would say, "I cannot believe how Tim Spence can just  
 8 answer these questions off the cuff, gives us insight  
 9 on the strategy. How are we making sure we're  
 10 developing this guy and we're preserving him?"

11 That's the type of well on your  
 12 path example that was occurring. There was nothing in  
 13 writing. It was executive session discussions.  
 14 Because again if as a director our most important role  
 15 is ensuring we have CEO succession it's critical we're  
 16 talking about this as part of every one of our  
 17 executive sessions as a way to recap the meeting, who  
 18 did we see perform well, who did we see that, gosh,  
 19 what -- how are you coaching this individual, I need  
 20 more help. There's -- The one thing I will say that  
 21 was always frustrating with a number of the leaders at  
 22 Fifth Third is we'd say in executive session, "Please  
 23 coach them not to read off their slides. They know  
 24 their business. Help us see what they know and get us  
 25 more comfortable with their capabilities."

	Page 40		Page 42
1	<b>And quite frankly Phil fell in that</b>	1	board between September of 2016 and October of 2020
2	<b>camp of where we were asking for, "Give him feedback.</b>	2	who ran the board meetings?
3	<b>Don't just read off the slide. Help us better</b>	3	<b>A Well, in 2016 Marsha Williams would</b>
4	<b>understand where your insights are about the</b>	4	<b>have been the chairperson at that point in time. I'm</b>
5	<b>business."</b>	5	<b>failing to recall at what point we gave Greg</b>
6	Q With respect to Tim Spence when did	6	<b>Carmichael the chairmanship, so it would be up until</b>
7	those executive sessions occur during which it was	7	<b>that date, but she was still quite active in running</b>
8	commented that, "Tim Spence, we need to develop this	8	<b>the board meetings as the lead independent director.</b>
9	guy to be the next President and CEO"?	9	Q Okay. And after Greg Carmichael
10	<b>A Quite frankly from my entire time</b>	10	took over as the chairman of the board he ran the
11	<b>at Fifth Third we were always just so impressed with</b>	11	board meetings; is that correct?
12	<b>him that I was even surprised to hear how being a</b>	12	<b>A Well, he -- the chairman --</b>
13	<b>brand new board member that he was already being</b>	13	<b>chairman always kicks off the meeting and does that,</b>
14	<b>referenced as a potential long-term -- Remember this</b>	14	<b>but still this is a very engaged active -- active</b>
15	<b>is 2016 -- as having years to develop that I said, "I</b>	15	<b>board. It was more a formality than anything else by</b>
16	<b>got to pay attention here," because, yeah, it -- it</b>	16	<b>Marsha's style and Greg's style. This was a very</b>
17	<b>was impressive to hear so many board members speak so</b>	17	<b>engaged board. So why I am expanding on that is</b>
18	<b>highly about a particular leader, and Greg was equally</b>	18	<b>because a good board is always providing credible</b>
19	<b>a proponent of saying, "Tim was a quick study, always</b>	19	<b>challenge, so just not letting a CEO who's now an</b>
20	<b>seeking feedback, wanted to grow and learn." That's</b>	20	<b>executive CEO chairman run the board because you have</b>
21	<b>how -- and he would even caution, "We just got to help</b>	21	<b>to have that healthy skepticism to ensure you're</b>
22	<b>develop him."</b>	22	<b>protecting all the shareholders.</b>
23	Q By Greg you're referring to	23	Q Who would determine the agenda for
24	Greg Carmichael; is that right?	24	the board meetings?
25	<b>A Yes.</b>	25	<b>A Oh, in the executive session we</b>
	Page 41		Page 43
1	Q What was the nature of your	1	<b>would say to Marsha as the lead director once Greg was</b>
2	relationship with Greg Carmichael?	2	<b>chair, "Please make sure this is included on the next</b>
3	<b>A Professional.</b>	3	<b>agenda," and there would be quite verbal as part of</b>
4	Q How often did you communicate with	4	<b>our closing executive session in how she would give</b>
5	Greg Carmichael during the period of September, 2016,	5	<b>him feedback.</b>
6	through October of 2020?	6	Q And who would determine the
7	<b>A Infrequently until it was April of</b>	7	documents that would be presented at a board meeting?
8	<b>2020 because then I was asked to be the audit chair</b>	8	<b>A Oh, management is ultimately</b>
9	<b>and it was COVID and there was a lot going on, but it</b>	9	<b>replying to the best of their ability to any requests</b>
10	<b>was entirely related around the pay -- paycheck</b>	10	<b>from management.</b>
11	<b>protection plan and all of the efforts that were going</b>	11	Q Who would determine who would --
12	<b>on across Fifth Third because, of course, there were a</b>	12	who would present from management at the board
13	<b>lot of concerns that we were doing it right and</b>	13	meetings?
14	<b>ensuring we weren't making mistakes and how that</b>	14	<b>A I don't know because I'm not</b>
15	<b>translated into internal control, so prior to April of</b>	15	<b>chairman, so that might have been a discussion between</b>
16	<b>2020 very rarely because I was not in a leadership</b>	16	<b>the chairman and the lead independent director.</b>
17	<b>role outside of the board meetings or a board dinner</b>	17	Q But you don't know one way or
18	<b>or a cocktail hour.</b>	18	another; is that right?
19	Q Okay. So just so I understand your	19	<b>A No. That would not be part of what</b>
20	answer outside of a board meeting, board dinner, or	20	<b>I'm doing as a postmortem as a -- as an audit chair.</b>
21	cocktail hour you didn't have much conversation or	21	Q You mentioned the one meeting you
22	communications with Mr. Carmichael until April of	22	had with Tim Spence when you were being onboarded?
23	2020; correct?	23	<b>A Uh-huh.</b>
24	<b>A Correct.</b>	24	Q Did you have any other meetings
25	Q During your time period on the	25	with Tim Spence outside board meetings, cocktail

<p>1 hours, and board dinners?</p> <p>2     <b>A     No.</b></p> <p>3     <b>Q     Did you ever meet with any of Tim</b></p> <p>4     <b>Spence's direct reports?</b></p> <p>5     <b>A     The only one is Ben -- What's Ben's</b></p> <p>6     <b>last name again? I'm trying to remember Ben's last</b></p> <p>7     <b>name.</b></p> <p>8     <b>Q     Are you referring to Ben Hoffman?</b></p> <p>9     <b>A     Ben Hoffman. Thank you.</b></p> <p>10     <b>Q     And when did you meet with Ben</b></p> <p>11     <b>Hoffman?</b></p> <p>12     <b>A     At a cocktail hour that was a skip</b></p> <p>13     <b>level so that's why to answer your question, but that</b></p> <p>14     <b>was still a cocktail hour.</b></p> <p>15     <b>Q     And did you specifically discuss</b></p> <p>16     <b>Tim Spence with Ben Hoffman?</b></p> <p>17     <b>A     No.</b></p> <p>18     <b>Q     Did you ever -- ever observe</b></p> <p>19     <b>Tim Spence in the workplace outside a board meeting,</b></p> <p>20     <b>cocktail hour, or board dinner?</b></p> <p>21     <b>A     No.</b></p> <p>22     <b>Q     Did you ever participate in or</b></p> <p>23     <b>perform any of Tim Spence's annual reviews or mid-year</b></p> <p>24     <b>reviews?</b></p> <p>25     <b>A     No.</b></p>	<p>Page 44</p> <p>1     <b>Q     Upon which other committees did you</b></p> <p>2     <b>sit for Fifth Third Bank?</b></p> <p>3     <b>A     Human Capital &amp; Compensation,</b></p> <p>4     <b>Risk &amp; Compliance, and then once I became audit chair</b></p> <p>5     <b>for the Audit Committee you also serve on the</b></p> <p>6     <b>Finance Committee as that represents all chairs of all</b></p> <p>7     <b>other committees.</b></p> <p>8     <b>Q     With respect to being on the</b></p> <p>9     <b>Human Capital/Compensation Committee did you have any</b></p> <p>10     <b>involvement in determining the emergency successor</b></p> <p>11     <b>process for President/CEO at Fifth Third?</b></p> <p>12     <b>A     Other than observing management's</b></p> <p>13     <b>recommendation and being a committee member, no.</b></p> <p>14     <b>Q     Do you recall if the HCCC had a</b></p> <p>15     <b>responsibility for determining the emergency successor</b></p> <p>16     <b>process for President and CEO of Fifth Third Bank?</b></p> <p>17     <b>A     Rephrase that question, please.</b></p> <p>18     <b>Q     Sure. The Human Capital/</b></p> <p>19     <b>Compensation Committee, do you recall if they had a</b></p> <p>20     <b>responsibility for determining the emergency</b></p> <p>21     <b>successor process for President and CEO at Fifth Third</b></p> <p>22     <b>Bank?</b></p> <p>23     <b>A     Okay. So let me just provide some</b></p> <p>24     <b>context. If the board member's primary responsibility</b></p> <p>25     <b>is CEO succession, one of the two primary that I have</b></p>
<p>1     <b>Q     Have you seen any of the</b></p> <p>2     <b>documentation from Tim Spence's annual reviews?</b></p> <p>3     <b>A     Other than what you referenced</b></p> <p>4     <b>earlier as the talent deck, no.</b></p> <p>5     <b>Q     Did you ever see Tim Spence's</b></p> <p>6     <b>employee engagement surveys?</b></p> <p>7     <b>A     No.</b></p> <p>8     <b>Q     Did you ever see Tim Spence's</b></p> <p>9     <b>customer experience surveys?</b></p> <p>10     <b>A     No.</b></p> <p>11     <b>Q     Did you ever see the individual</b></p> <p>12     <b>financial performance relative to goals for Tim</b></p> <p>13     <b>Spence's divisions?</b></p> <p>14     <b>A     Well, when he had line of business,</b></p> <p>15     <b>yes, but he was strategy initially so it was more</b></p> <p>16     <b>about executing on strategic initiatives that crossed</b></p> <p>17     <b>all of the lines of business, so the performance would</b></p> <p>18     <b>be KPIs to a strategic initiative and that would be</b></p> <p>19     <b>yes.</b></p> <p>20     <b>Q     You mentioned the Audit Committee;</b></p> <p>21     <b>correct?</b></p> <p>22     <b>A     Correct.</b></p> <p>23     <b>Q     That you were an audit chair</b></p> <p>24     <b>beginning in April of 2020; is that right?</b></p> <p>25     <b>A     Yes.</b></p>	<p>Page 45</p> <p>1     <b>referenced continually, the second being strategic</b></p> <p>2     <b>oversight, then the work, the heavy lifting, is done</b></p> <p>3     <b>in a committee. The Human Capital &amp; Compensation</b></p> <p>4     <b>Committee in its governance and fiduciary role has the</b></p> <p>5     <b>oversight of ensuring there is a CEO succession, so</b></p> <p>6     <b>that committee is who pushes management to say, "We</b></p> <p>7     <b>need your perspective of who you think would be</b></p> <p>8     <b>interim CEO and any of several CEO Interim Emergency</b></p> <p>9     <b>Succession Plans," and based off of that we as a</b></p> <p>10     <b>committee review it and because that's a full board</b></p> <p>11     <b>responsibility it's why it's part of equally the</b></p> <p>12     <b>December discussion that occurs on the overall talent</b></p> <p>13     <b>review and we then speak in executive committee</b></p> <p>14     <b>amongst ourselves whether we agreed fully or not with</b></p> <p>15     <b>what management proposed.</b></p> <p>16     (Deposition Exhibit 2 was marked</p> <p>17     for identification.)</p> <p>18     BY MR. SABA:</p> <p>19     <b>Q     Ms. Mallesch, I have handed you</b></p> <p>20     <b>what's been marked as Exhibit No. 2. I will represent</b></p> <p>21     <b>to you this document is Bates stamped, and by Bates</b></p> <p>22     <b>stamped I'm referring to the numbering in the bottom</b></p> <p>23     <b>right-hand corner --</b></p> <p>24     <b>A     Uh-huh.</b></p> <p>25     <b>Q     -- of the first page. The first</b></p>

<p style="text-align: right;">Page 48</p> <p>1 page is Bates stamped FIFTHTHIRD-MCHUGH-006592 and the      2 last page should be Bates stamped      3 FIFTHTHIRD-MCHUGH-006604 -- Do you see that?</p> <p><b>A I do.</b></p> <p>Q Is that accurate for the document      that you have in front of you?</p> <p><b>A It is.</b></p> <p>Q Okay. Are you able to identify the      first two pages of Exhibit No. 2 for me, please?</p> <p><b>A The first page it looks like an      email from Saema to it looks to me to be the committee      members at the time of Human Capital &amp; Compensation,      yeah, an email.</b></p> <p>Q And your email's one of the emails      we see there, is that correct, on the first page,      emallesch@gmail.com; is that correct?</p> <p><b>A That's why I said it's the      Human Capital Committee members, Mike, myself, Nick,      Gary.</b></p> <p>Q And this is from September 11th,      2018; is that correct?</p> <p><b>A Correct.</b></p> <p>Q Okay. And the email indicates,      "Attached please find the materials for the CEO      Emergency Succession Plan discussion"; is that</p>	<p>1 Q Thank you.      Beginning at 006598 through 006604      that portion is entitled "Human Capital &amp; Compensation      Committee Executive Session 'Break The Glass' Toolkit"      dated September 17th, 2018 -- Do you see that?</p> <p><b>A Yes.</b></p> <p>Q Okay. Can you explain to me      what -- what this document sets forth?</p> <p><b>A Again it's -- If you're a director      and you're looking at the Communication Elements that      were reflected in the prior pages of 006594 through      006597 now the next logical question a director wants      to see is, Okay. How are you thinking that through?      What's your logic thread of what occurs, and that's      why management responded to our request by providing      those subsequent pages.</b></p> <p>Q And so these subsequent pages, do      these set forth the Emergency CEO Succession Process      at Fifth Third?</p> <p><b>A It's my understanding, yes.</b></p> <p>Q Take me through the process of how      this was adopted as the Emergency CEO Succession      Process of Fifth Third Bank in 2018?</p> <p><b>A It's right on the pages.</b></p> <p>Q No. My question more goes to you.</p>
<p>1 correct?</p> <p><b>A Correct.</b></p> <p>Q And then can you identify for me      what we see marked as FIFTHTHIRD-MCHUGH-006594 through      the balance of Exhibit 2, FIFTHTHIRD-MCHUGH-006604?</p> <p><b>A It appears to be the various      scenarios I have referenced on what we do at our      oversight role of interim CEO succession on an      emergency basis and scenarios provided.</b></p> <p>Q Beginning with 006594 through      006597 the title page for those pages is      Communication Elements -- Do you see that?</p> <p><b>A I do.</b></p> <p>Q Can you explain to me what that      particular document is?</p> <p><b>A This is as its subsequent pages      reflect where we have to provide regulatory      notification on any of the scenarios and how many days      we have to do that.</b></p> <p>Q And by the scenarios you're      referring to the different scenarios where a CEO may      leave suddenly and have to be replaced; is that      correct?</p> <p><b>A And to be very explicit on your      Page 006597 the scenarios are provided, yes.</b></p>	<p style="text-align: right;">Page 49</p> <p>1 This was obviously presented to the Human Capital &amp;      2 Compensation Committee in September, 2018; is that      3 correct?</p> <p><b>A Yes.</b></p> <p>Q And so what does the Human Capital/      Compensation Committee do? They review this packet;      is that right?</p> <p><b>A Yes.</b></p> <p>Q All right. And you would determine      if you agree with all the information set forth in the      packet; is that right?</p> <p><b>A We just review this and say,      "Management has a plan," and that's all we do is then      we go into private session and we discuss whether we      support fully how they're thinking of -- Like, for      example, why don't we go to 006603 on Scenario 2,      Potential Management Candidates, Tayfun and Frank      Forrest.</b></p> <p>Q Okay.</p> <p><b>A So we're just going to review and      say, "Does that make sense?" It makes sense at that      point in time.</b></p> <p>Q Okay. And so Human Capital &amp;      Compensation Committee does that in executive session.      Is this then presented to the full board for review</p>

	Page 52		Page 54
1	and approval?	1	(Deposition stood in recess at
2	<b>A In December.</b>	2	10:56 a.m.)
3	<b>Q Okay. And did that happen?</b>	3	(Deposition reconvened at
4	<b>A The minutes would reflect if it</b>	4	11:15 a.m.)
5	<b>happened.</b>	5	THE VIDEOGRAPHER: We are back on
6	<b>Q As you sit here today do you recall</b>	6	the record. This is Media 2 of today's
7	<b>that?</b>	7	deposition. The time is 11:15.
8	<b>A I don't recall.</b>	8	BY MR. SABA:
9	<b>Q Okay.</b>	9	<b>Q Ms. Mallesch, you mentioned there</b>
10	<b>A We'd have to go to the minutes.</b>	10	would have been cocktail parties where you observed
11	<b>Q Okay. You referred specifically to</b>	11	Phil McHugh. At how many of the cocktail parties did
12	<b>the Potential Management Candidates we see on</b>	12	you speak to Phil McHugh?
13	<b>FIFTHTHIRD-MCHUGH-006603, correct --</b>	13	<b>A I do not recall.</b>
14	<b>A Yes.</b>	14	<b>Q Do you recall anywhere you spoke to</b>
15	<b>Q -- Tayfun Tuzun and Frank Forrest?</b>	15	<b>Phil McHugh?</b>
16	Did you review anything else with	16	<b>A I only really recall the dinner I</b>
17	respect to the Emergency CEO Succession Plan?	17	<b>referenced where we were sitting next to each other.</b>
18	<b>A No. This is the document we review</b>	18	<b>Q Other than that you have no other</b>
19	<b>as a committee doing the work before it's presented to</b>	19	specific recollection of Phil McHugh at a dinner or a
20	<b>the full board.</b>	20	cocktail party?
21	<b>Q And my question is you -- you</b>	21	<b>A Correct.</b>
22	highlighted the information of Tayfun Tuzun and	22	MR. SABA: Mark that as 3, please.
23	Frank Forrest. I'm asking is that the only thing that	23	(Deposition Exhibit 3 was marked
24	you look at or do you look at the entire plan?	24	for identification.)
25	<b>A Oh, the entire document.</b>	25	MR. SABA: And 4.
	Page 53		Page 55
1	<b>Q Okay. Do you know if the</b>	1	(Deposition Exhibit 4 was marked
2	Emergency CEO Succession Plan, is that approved in	2	for identification.)
3	executive session or is that approved in resolutions	3	BY MR. SABA:
4	at a board -- at the final board meetings in December?	4	<b>Q Ms. Mallesch, I have handed you</b>
5	<b>A I do not recall. You'd have to go</b>	5	what's been marked as Exhibits 3 and 4. Exhibit 3 is
6	<b>to the minutes.</b>	6	Bates stamped 001104. Can you identify that document
7	<b>Q How long did you remain on the</b>	7	for me, please?
8	Fifth Third Human Capital & Compensation Committee?	8	<b>A It's an email communicating the</b>
9	<b>A I was on that from 2016 until --</b>	9	<b>final executive talent management update it looks like</b>
10	<b>Let's see, we're in 2024. I think I came off last</b>	10	<b>dated 2019.</b>
11	<b>year, either April of 2023 or the prior year -- I'm</b>	11	<b>Q And that wow for the board meeting</b>
12	<b>forgetting which -- but it was well after Phil left.</b>	12	on September 17, 2019; is that correct?
13	<b>Q Would the -- How -- How frequently</b>	13	<b>A Correct.</b>
14	would the Human Capital & Compensation Committee	14	<b>Q And Exhibit No. 4 is titled "Board</b>
15	review the Emergency Successor Plan for Fifth Third	15	of Directors Human Capital and Executive Talent
16	Bank?	16	Management and Succession Plan Updates" Bates stamped
17	<b>A Annually.</b>	17	FIFTHTHIRD-MCHUGH-001105 through
18	<b>Q And would that be in preparation</b>	18	FIFTHTHIRD-MCHUGH-001154; is that correct?
19	for the December meeting each year?	19	<b>A Correct.</b>
20	<b>A Correct.</b>	20	<b>Q Can you identify Exhibit 4 for me,</b>
21	MR. SABA: We can go off the	21	<b>please?</b>
22	record.	22	<b>A It's the referenced email, the</b>
23	THE VIDEOGRAPHER: Off the record	23	<b>attachment of the Human Capital and Executive Talent</b>
24	10:56.	24	<b>Management and Succession Plan Update, for the</b>
25		25	<b>December, 2019, meeting.</b>

	Page 56		Page 58
1	Q And this is what we have referred	1	time, Chief Human Resources Officer; correct?
2	to as the talent deck; is that correct?	2	<b>A Correct.</b>
3	<b>A Correct.</b>	3	Q Okay. And that's who would have
4	Q You have heard that reference	4	gone through this information, the talent deck, with
5	before; is that right?	5	the board, Mr. Shaffer, and Mr. Carmichael; correct?
6	<b>A That is correct.</b>	6	<b>A Correct.</b>
7	Q Okay. And this would have been for	7	Q Okay. Is that done in executive
8	the particular board meeting on December, 2000 --	8	session or is that done in the regular part of the
9	December 17th, 2019; is that right?	9	board meeting?
10	<b>A Correct.</b>	10	<b>A It's a special executive session</b>
11	Q Okay. How is this document,	11	<b>that kicks off the whole day. It's considered part of</b>
12	Exhibit No. 4, used at a board meeting?	12	<b>the board meeting, but it's -- the only management</b>
13	<b>A We will all have pre-read it before</b>	13	<b>there is Greg Carmichael and as you corrected me</b>
14	<b>coming and by virtue of our primary role in CEO</b>	14	<b>Bob Shaffer for his role at the time as the people</b>
15	<b>succession look at each of the leaders and assess how</b>	15	<b>leader.</b>
16	<b>management -- because this is entirely a management</b>	16	Q If I can refer you to
17	<b>document how management views each of the executives.</b>	17	FIFTHTHIRD-MCHUGH-001151 --
18	Q And do you review the entire talent	18	<b>A I am there.</b>
19	deck packet?	19	Q Are you on that page?
20	<b>A I do.</b>	20	<b>A (Nodding head.)</b>
21	Q What will the board then do with	21	Q And FIFTHTHIRD-MCHUGH-001151 refers
22	this talent deck after reviewing it for the	22	to the Emergency CEO Succession Plan Communication
23	information provided by management?	23	Elements; is that correct?
24	<b>A We dedicate a whole morning with</b>	24	<b>A Correct.</b>
25	<b>the CEO and the head of Human Capital &amp; Compensation</b>	25	Q And that goes through
	Page 57		Page 59
1	<b>at the time, and I am failing to remember if it was</b>	1	FIFTHTHIRD-MCHUGH-001154; is that right?
2	<b>Teresa Tanner at that -- still at that time or someone</b>	2	<b>A Correct.</b>
3	<b>else. I don't think on the email it would say who was</b>	3	Q And similar to what we reviewed for
4	<b>the HR leader, so forgive me for forgetting who was</b>	4	2018 that would have been a communication plan
5	<b>the HR leader at this -- for this meeting. But,</b>	5	reviewed and approved out by the Human Capital/
6	<b>though, Greg and the -- that individual takes us</b>	6	Compensation Committee; is that correct?
7	<b>through their perspective and we provide credible</b>	7	<b>A Correct, for submission and review</b>
8	<b>challenge. We do it for each of the Executive</b>	8	<b>with the full board.</b>
9	<b>Committee, Enterprise Committee, I think is the way</b>	9	Q Okay. And that's what's taking
10	<b>Fifth Third phrases it, and we then will by virtue of</b>	10	place here in December, 2019, is the review and
11	<b>who's a big talent on a skip level perhaps talk about</b>	11	submission by the whole board; is that correct?
12	<b>a next level down.</b>	12	<b>A Correct.</b>
13	<b>Like, for example, as audit chair I</b>	13	Q Okay. If I could refer you to
14	<b>care passionately about that who's going to succeed</b>	14	FIFTHTHIRD-MCHUGH-001143.
15	<b>Mark Hazel as the Controller even though he's not on</b>	15	<b>A I am there.</b>
16	<b>the Enterprise Committee to the CFO and how we think</b>	16	Q And that is titled "Emergency CEO
17	<b>about financial controls as one example.</b>	17	Succession Plan"; is that correct?
18	Q By way of clarification the email	18	<b>A Correct.</b>
19	does rep -- reckon -- Excuse me -- identify	19	Q And that Emergency CEO Succession
20	Bob Shaffer --	20	Plan runs through FIFTHTHIRD-MCHUGH-001150; is that
21	<b>A Okay.</b>	21	right?
22	Q Is that who would have been the --	22	<b>A That is correct.</b>
23	<b>A Correct. Thank you. That's</b>	23	Q And this is the Emergency CEO
24	<b>correct.</b>	24	Succession Plan that would have been reviewed and
25	Q -- head of Human Resources at that	25	approved out and recommended by the Human Capital/

<p>1 Compensation Committee; is that correct?</p> <p>2       <b>A It was reviewed and approved for</b></p> <p>3 <b>submission for the full board to review.</b></p> <p>4       Q Okay. And that review and</p> <p>5 submission was by the Human Capital/Compensation</p> <p>6 Committee; is that correct?</p> <p>7       <b>A Correct.</b></p> <p>8       Q Okay. And I think you -- you</p> <p>9 indicated before you were part of the Human Capital/</p> <p>10 Compensation Committee that would have reviewed and</p> <p>11 approved of this Emergency CEO Succession Plan; is</p> <p>12 that right?</p> <p>13       <b>A That's correct.</b></p> <p>14       Q Okay. Referring to</p> <p>15 FIFTHTHIRD-MCHUGH-001148 --</p> <p>16       <b>A I am there.</b></p> <p>17       Q -- in the category of</p> <p>18 Potential Management Candidates it refers to</p> <p>19 Tayfun Tuzun and Phil McHugh; is that correct?</p> <p>20       <b>A Correct.</b></p> <p>21       Q Okay. Had you determined that</p> <p>22 Phil McHugh would have been the appropriate emergency</p> <p>23 CEO successor?</p> <p>24       <b>A No. I observed it from my personal</b></p> <p>25 <b>view and was comforted to see the CFO was also listed</b></p>	Page 60	<p>1 think in an emergency if you can't get ahold of board</p> <p>2 members a Finance Committee would meet with all of the</p> <p>3 chairs of all the committees to start the process to</p> <p>4 say, "Dust this off, pull it out," and say, "Who did</p> <p>5 management propose," and then, "What -- What do we</p> <p>6 think?" It would not necessarily automatically be</p> <p>7 assumed that the names on this page -- And it's why</p> <p>8 quite frankly I have been on boards where they won't</p> <p>9 be even put this as a document so they don't mislead</p> <p>10 another person in the organization to think they're</p> <p>11 potentially CEO successor. They call it a white</p> <p>12 envelope that only the chair holds because they don't</p> <p>13 want to create that distraction with certain leaders</p> <p>14 in the organization because I believe we're sitting</p> <p>15 here because someone thought his name was on the page</p> <p>16 and he should be the CEO and that's not the process.</p> <p>17       The CEO successor is the board's</p> <p>18 responsibility and only the board, and even though</p> <p>19 Greg Carmichael was the Chairman the Chairman is one</p> <p>20 voice out of what, we have 15 people, so today</p> <p>21 Tim Spence is one voice and he only has one voice in</p> <p>22 that vote for how we're going to think about who's CEO</p> <p>23 succession even in today's environment.</p> <p>24       Q Was this Emergency CEO Succession</p> <p>25 Plan approved by the board?</p>	Page 62
<p>1 because that's how I would have been looking at it for</p> <p>2 an emergency successor.</p> <p>3       Q Did you oppose Phil McHugh as an</p> <p>4 emergency CEO successor?</p> <p>5       <b>A No, because I respect the views of</b></p> <p>6 <b>my peers and if someone who's more operationally</b></p> <p>7 <b>focused because my filter is audit chair and thinking</b></p> <p>8 <b>of external communications that I am biased towards a</b></p> <p>9 <b>CFO always and an interim unless the CFO is</b></p> <p>10 <b>demonstrating some sort of incapability of being an</b></p> <p>11 <b>interim. I always respect the view of other board</b></p> <p>12 <b>members, did not know the view of other board members,</b></p> <p>13 <b>but it was understandable that an operation leader</b></p> <p>14 <b>would equally be listed here.</b></p> <p>15       Q Why is that?</p> <p>16       <b>A Because it's normally you're</b></p> <p>17 <b>evaluating the CEO for their capabilities and of his</b></p> <p>18 <b>assessing or if it's a she they're assessing their</b></p> <p>19 <b>team. It's their duty and their role of what we</b></p> <p>20 <b>expect from them to be coming to these meetings with</b></p> <p>21 <b>proposed candidates, but ultimately it's a board</b></p> <p>22 <b>responsibility.</b></p> <p>23       So say a Scenario 1A or 1B occurred</p> <p>24 we would meet as a board likely perhaps starting with</p> <p>25 that Finance Committee that's established which I</p>	Page 61	<p>1       <b>A Approved for review and to say we</b></p> <p>2 <b>have a document to show good governance hygiene, that</b></p> <p>3 <b>we're thoughtful about how we think about it at a</b></p> <p>4 <b>point in time, but again it's in a -- when you pull</b></p> <p>5 <b>the trigger for any of these scenarios it's that point</b></p> <p>6 <b>in time.</b></p> <p>7       <b>Think of it like a balance sheet.</b></p> <p>8 A balance sheet is nothing more than that day that you</p> <p>9 printed it. And so this report is nothing more than</p> <p>10 the views on that day, but the day you have to make</p> <p>11 these decisions drives what's going on in the</p> <p>12 environment.</p> <p>13       For example, look what happened</p> <p>14 last year with March -- March -- They call it</p> <p>15 March Madness in the banking sector. If we were an</p> <p>16 SVB that was -- what happened with SVB you would be</p> <p>17 pulling out to say -- If you have your regulator</p> <p>18 saying, "Your CEO is not operating effectively," you</p> <p>19 would have to say, "What's going on in the current</p> <p>20 environment and who would you pick then as that</p> <p>21 potential successor as you're driving an interim," so</p> <p>22 it's truly a point in time and this is just your</p> <p>23 governing document to show you have got good</p> <p>24 governance hygiene.</p> <p>25       Q Who would have indicated that they</p>	Page 63

<p style="text-align: right;">Page 64</p> <p>1    felt Phil McHugh was appropriate to be an emergency      2    CEO successor?</p> <p>3    <b>A    I --</b></p> <p>4        MR. CIOFFI: Objection to the form      5        of the question --</p> <p>6    <b>A    I do not --</b></p> <p>7        MR. CIOFFI: -- assumes facts not      8        in evidence if -- that someone did say that      9        he was a potential emergency successor.</p> <p>10   BY MR. SABA:</p> <p>11   Q       Are you aware of any board members      12   who testified that Phil McHugh was an appropriate      13   emergency CEO successor?</p> <p>14   <b>A    I am not aware of anyone who's      15   testified to that.</b></p> <p>16   Q       Did you voice an opinion that      17   Phil McHugh is not an -- an appropriate emergency CEO      18   successor?</p> <p>19   <b>A    No, because I took comfort to see      20   Tayfun's name there and I said, "If the day ever came      21   I'll be quite vocal about who should be the      22   successor," based off of the needs at that moment.</b></p> <p>23   Q       And could those needs have      24   demonstrated that Phil McHugh should be the emergency      25   CEO successor?</p>	<p style="text-align: right;">Page 66</p> <p>1    require that specific individuals be identified with      2    respect -- with respect to emergency succession?</p> <p>3    <b>A    I am not understanding your      4    question.</b></p> <p>5    Q       Do you have any understanding      6       whether or not the requirements for an Emergency CEO      7       Succession Plan require that a specific individual or      8       individuals be identified for that Succession Plan?</p> <p>9    <b>A    No.</b></p> <p>10   Q       You don't know one way or another?</p> <p>11   <b>A    I -- I don't believe there's any      12   framework for an emergency CEO succession that would      13   indicate that a particular role has to be in that as      14   one of the individuals or roles that are required to      15   be there. It's based off of evaluating off of what      16   the board views at the moment of where that need is      17   who's in the best capabilities to serve in that role.</b></p> <p>18   Q       Who prepared the Emergency CEO      19   Succession Plan that we see identified      20   FIFTHTHIRD-MCHUE-001143 through FIFTHTHIRD-MCHUGH-      21   001150?</p> <p>22   <b>A    Management.</b></p> <p>23   Q       Who from management specifically?</p> <p>24   <b>A    I would guess it would be      25   Bob Shaffer with his team primarily with oversight</b></p>
<p style="text-align: right;">Page 65</p> <p>1    <b>A    I doubt it because communication      2       skills were critical and you have to be able to do      3       more than read your slides, and by virtue of those      4       type of scenarios it's even more critical to have      5       strong communication skills.</b></p> <p>6    Q       Did any board member indicate to      7       you that Phil McHugh should not be an emergency CEO      8       successor?</p> <p>9    <b>A    Rephrase that question, please.</b></p> <p>10   Q       Did any board members indicate to      11       you that Phil McHugh should not be listed as an      12       emergency CEO successor?</p> <p>13   <b>A    In executive session all I heard      14       was where folks felt strongly that the CFO is the      15       right choice for a potential successor. There      16       wasn't -- I did not -- I do not recall hearing anyone      17       voice pro or negative on Phil.</b></p> <p>18   Q       Do you recall any discussion      19       regarding Phil McHugh as emergency CEO successor?</p> <p>20   <b>A    No.</b></p> <p>21   Q       Are you aware if the bank is      22       required to have an Emergency CEO Succession Plan?</p> <p>23   <b>A    Every company is required to have      24       an Emergency Succession Plan.</b></p> <p>25   Q       Do you know if those requirements</p>	<p style="text-align: right;">Page 67</p> <p>1    <b>from Greg Carmichael.</b></p> <p>2    Q       Are there any minutes from the      3       executive session where the Emergency CEO Succession      4       Plan was discussed?</p> <p>5    <b>A    I'm sure there are, but I don't      6       have them nor recollect them.</b></p> <p>7    Q       You're sure there are minutes from      8       that meeting?</p> <p>9    <b>A    Well, there would be minutes that      10       would at a minimum say, "The board reviewed CEO      11       succession, emergency succession." I'm not -- at all      12       have a recollection of what sort of depth would be in      13       those minutes because being in executive session it is      14       not unusual just to make reference that the board      15       exercised its duty performing that review.</b></p> <p>16   Q       Can you identify FIFTHTHIRD-MCHUGH-      17   001141 through 1142 for me, please?</p> <p>18   <b>A    That is CEO Succession Plan.</b></p> <p>19   Q       Do you know who prepared      20   FIFTHTHIRD-MCHUGH-001141 through 001142?</p> <p>21   <b>A    Again I would say management,      22       Bob Shaffer, and after review of by Greg Carmichael      23       would have been provided as a draft to the board.</b></p> <p>24   Q       Did the board approve of the      25       CEO Succession Plan that's identified</p>

	Page 68		Page 70
1	FIFTHTHIRD-MCHUGH-00141 through 00142?	1	<b>painted a picture for the board beyond what you were reading on the page.</b>
2	MR. CIOFFI: Objection to the form	2	Q Other than presentations Brian Lamb
3	of the question.	3	may have made at board meetings what other evidence
4	<b>A The board reviewed it and discussed</b>	4	did you have of his inspired leadership?
5	<b>it in executive session.</b>	5	<b>A His associates. It was one where</b>
6	Q And what were those discussions?	6	<b>folks would come up to me who when you're in a</b>
7	A We supported Tim Spence as	7	<b>cocktail hour and just say what a pleasure it was to</b>
8	performing extremely well and that he was likely going	8	<b>work with Brian and how Brian inspired them. It was</b>
9	to be CEO successor and again not much on emergency	9	<b>highly unusual to have that.</b>
10	successor because the majority of the board that were	10	Q Who specifically indicated that?
11	vocal on the discussion were happy to see the CFO was	11	A I don't know. They were skip-level
12	reflected for purposes of external communications	12	folks that you have at cocktail hours when Greg would
13	because Tayfun was a fabulous communicator.	13	expand a board dinner that would include beyond the
14	Q What was the discussion regarding	14	Enterprise Committee.
15	Brian Lamb?	15	Q How often did that occur?
16	A Brian Lamb is an individual who --	16	A Oh, once a year I think we had
17	an amazing communicator so much so the joke was that	17	those larger board dinners where there were folks
18	even Greg didn't want to follow him in a presentation,	18	beyond the Enterprise Committee, so it wasn't
19	and he just had an amazing runway that he was viewed	19	frequently, but when you're a board member you
20	as long-term potential as a potential successor to the	20	remember because of the fact that it's unusual to have
21	CEO by virtue of his amazing strategic and	21	those type of interactions.
22	communication skills but needed more -- more deeper	22	Q How many interactions did you have
23	operational experience within the bank.	23	regarding Brian Lamb?
24	Q You referred to he had an amazing	24	A Oh, several. Brian Lamb was one
25	runway. What do you mean an amazing runway?	25	who equally sought out the directors and made it --
	Page 69	1	He -- He just understood what it meant to be a leader.
1	A Leadership is always -- I mean he	2	It was building relationships and he would go out of
2	-- he effectively had a charisma. There was a	3	his way to ensure at a cocktail hour he was meeting
3	charisma about Brian Lamb that created fellowship. He	4	with different people on -- on the board, and he
4	in -- He had an inspired leadership in how his	5	would recall -- This is other was inspiring -- he
5	operating style was, and that's a big part of what any	6	would just recall your prior conversation and ask
6	leader of a company has to do. They have to be an	7	about details in your life. That's -- That's really
7	aspiring leader, especially in the challenges the	8	impressive with how many people he was interacting
8	banking sector faces. He -- He was nothing short of	9	with.
9	impressive.	10	Q Other than those cocktail party
10	Q What -- What did you base that	11	interactions and the presentations made by Brian Lamb
11	determination on that he inspired leadership?	12	anything else that -- any other evidence you had that
12	A Again I am sure you have your	13	he was an inspired leader?
13	personal views of somebody that's inspired you just by	14	A No. It was communication again
14	listening to them and that's how Brian Lamb was and to	15	which is a critical aspect of being a CEO.
15	the point that your CEO didn't even want to follow him	16	Q Other than Exhibit 4 what other
16	in a presentation.	17	documentation would the board have at the December
17	Q So again that determination that --	18	board meeting?
18	that Brian Lamb had inspired leadership, that was just	19	A For evaluating?
19	limited to whatever presentations he may have made	20	MR. CIOFFI: Objection to the form
20	during board meetings?	21	of the question.
21	A When he -- he -- Equally when he --	22	THE WITNESS: Yeah.
22	So that's a great question because when he -- I always	23	MR. CIOFFI: About what?
23	remembered him in a board meeting because he didn't	24	THE WITNESS: Thank you.
24	speak to his slides. He came in and was passionate	25	
25	about what he had done and what he wanted to do. He		

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1	BY MR. SABA:		
2	Q Referring specifically to December,	1	two-thirds down the page it begins, "Thereafter,
3	2019, other than the talent deck that we have marked	2	Mr. Carmichael and Mr. Shaffer initiated a review of
4	as Exhibit No. 4 what other documentation would you	3	potential succession timelines and candidates for the
5	receive for that meeting?	4	Chief Executive Officer ("CEO") position. They
6	MR. CIOFFI: Same objection. You	5	reviewed top succession candidates, including
7	can answer.	6	Mr. Spence, and discussed the potential timelines for
8	A <b>I'm pausing because the only other</b>	7	their readiness and key development priorities for
9	<b>documents I would look at as by being audit chair and</b>	8	each such candidates" -- Do you see that there?
10	<b>serving on Risk Committees we would look at the</b>	9	A <b>I do.</b>
11	<b>performance documents of the risk leader, the</b>	10	Q Who were the candidates that they
12	<b>internal audit leader, and the credit leader because</b>	11	discussed other than Mr. Spence?
13	<b>that's a governance requirement within the banking</b>	12	A <b>I don't recall because the board</b>
14	<b>sector, so to make sure I'm complete in my answer this</b>	13	<b>was already in their mind, myself included, that</b>
15	<b>was the only document for the individuals we're</b>	14	<b>the -- the talent of Mr. Spence was such that the</b>
16	<b>talking about is Phil, Brian Lamb, Tim Spence, that I</b>	15	<b>focus of the discussion was always about how are we</b>
17	<b>would have looked at on their performance.</b>	16	<b>developing him.</b>
18	Q Nothing else?	17	Q Do you know why it refers to plural
19	A <b>Nothing else.</b>	18	candidates that were discussed by Mr. Carmichael and
20	Q Okay. And to describe my question	19	Mr. Shaffer?
21	nothing other than Exhibit 4 with respect to the	20	A <b>I do and I'm chuckling because of</b>
22	performance of Phil McHugh, Tim Spence, and Brian	21	<b>my vast public company experience. Every CEO likes to</b>
23	Lamb; correct?	22	<b>think they have multiple candidates by virtue of how</b>
24	A <b>Correct.</b>	23	<b>they're being assessed in developing talent and</b>
25	Q Do you recall how frequently Brian	24	<b>leadership, so I have yet to see a CEO ever propose</b>
		25	<b>only one candidate and not any others, so it's more of</b>
	Page 73		Page 75
1	Lamb would attend board meetings?	1	<b>where they're trying to demonstrate their capabilities</b>
2	A <b>No. I would do the same math as</b>	2	<b>which is always evaluated by a board over the depth of</b>
3	<b>how I described Phil.</b>	3	<b>talent that a CEO can present as potential successors</b>
4	(Deposition Exhibit 5 was marked	4	<b>because it's a great luxury. I have only had it</b>
5	for identification.)	5	<b>happen once on one of my public company boards where</b>
6	BY MR. SABA:	6	<b>we had three potential candidates and that is a luxury</b>
7	Q You would defer, though, to the	7	<b>most companies don't have, so that's more management</b>
8	board minutes for an indication of who was actually	8	<b>and because management crafts the minutes nobody</b>
9	present at a particular board meeting; is that right?	9	<b>edited it beyond to say what was going on because I</b>
10	A <b>Correct.</b>	10	<b>can see the executive session below. We talk in</b>
11	Q Ms. Mallesch, I have handed you	11	<b>executive session and the focus was on Tim's</b>
12	what's been marked as Exhibit No. 5 which is	12	<b>development.</b>
13	Bates stamped FIFTHTHIRD-MCHUGH-000253 through	13	Q You said you have yet to see a CEO
14	FIFTHTHIRD-MCHUGH-000265. Can you identify that	14	present only one candidate?
15	document for me, please?	15	A <b>Correct.</b>
16	A <b>Yes. It's the minutes of the board</b>	16	Q So who were the other candidates
17	<b>meeting of December 17th, 2019.</b>	17	that Mr. Carmichael would have presented?
18	Q And with respect to that board	18	A <b>It's what you referenced in your</b>
19	meeting Mr. Spence was present, but Mr. Lamb and	19	<b>succession -- whatever one of your exhibits the</b>
20	Mr. McHugh were not present; is that correct?	20	<b>succession shared where you were asking me about whose</b>
21	A <b>Correct.</b>	21	<b>names are there presented is Tayfun and Phil is how</b>
22	Q If you could turn to the second	22	<b>Greg Carmichael would present potential other</b>
23	page of Exhibit No. 5, FIFTHTHIRD-MCHUE-000254.	23	<b>candidates.</b>
24	A <b>I am there.</b>	24	Q Here's --
25	Q Referring to the paragraph roughly	25	A <b>Go ahead.</b>

<p>1           Q     No. I'm just trying to understand 2 what you just said. So you're saying Greg Carmichael 3 would have presented Tayfun and Phil --</p> <p>4           A     <b>Yes.</b></p> <p>5           Q     -- as well as Tim Spence; correct?</p> <p>6           A     <b>Correct, but again by virtue of</b> <b>7 being able to have plural in that minutes.</b></p> <p>8           Q     And with respect to Tayfun and Phil 9 what were Mr. Carmichael's comments regarding their 10 potential timelines and their -- and their readiness 11 and key development priorities -- priorities?</p> <p>12          A     <b>He always would call them just</b> <b>13 potential. They were never ever emphasized by him</b> <b>14 either. His energy would be more in developing Tim</b> <b>15 too.</b></p> <p>16          Q     I'm just referring to the minutes 17 where it says, "They reviewed top succession 18 candidates," which you indicated were -- would have 19 been Phil and Tayfun in addition to Tim Spence, "and 20 discussed the potential timelines for their readiness 21 and key development priorities for each such 22 candidate."</p> <p>23          A     <b>Yeah, it's a management -- that's a</b> <b>24 management written document that we did not challenge</b> <b>25 in approving these minutes because management, in</b></p>	<p>Page 76</p> <p>1           their readiness? 2           MR. CIOFFI: Same objection. You 3 may answer if you can. 4           A     <b>Again my focus was on Tim to ensure</b> <b>5 he was developing Tim. Whatever they said I don't</b> <b>6 recall.</b></p> <p>7           Q     Had you decided in your mind at 8 that time that Tim Spence would be the next President 9 and CEO of Fifth Third Bank?</p> <p>10          A     <b>I decided at that time that the</b> <b>11 person who was on the trajectory to ultimately be CEO</b> <b>12 because the President role that you're referencing was</b> <b>13 another interim step. It wasn't CEO at that point in</b> <b>14 time. He was given another expanded role. So it was</b> <b>15 not -- It was I was just viewing that, yeah, this is</b> <b>16 the talent. If we're going to say there's an internal</b> <b>17 talent to develop rather than going externally</b> <b>18 Tim Spence was that talent.</b></p> <p>19          Q     And you had already made that 20 decision as of December, 2019; is that correct?</p> <p>21          A     <b>I made the decision as one director</b> <b>22 that where I felt the development should -- efforts</b> <b>23 should be placed is with Tim Spence.</b></p> <p>24          Q     Did Greg Carmichael ever 25 communicate to you that as of August of 2019 he had</p>
<p>1           <b>fact, did do that. Again the responsibility is the</b> <b>2 board. There's nothing management can do to change</b> <b>3 that otherwise, so that's just their performing the</b> <b>4 work we asked to provide potential candidates and</b> <b>5 develop timelines.</b></p> <p>6           Q     And my specific question is 7 recognizing you said management did do that, they 8 developed potential timelines and the readiness and 9 key development priorities, what specifically were 10 those with respect to Tayfun and Phil McHugh?</p> <p>11          A     <b>We would have to --</b></p> <p>12          MR. CIOFFI: Objection to the form 13 of the question as to whether you're talking 14 about CEO, a permanent position, or going 15 back to 1142 and emergency successor.</p> <p>16          MR. SABA: Just an objection for 17 the record, Michael. You don't need to make 18 it a speaking objection.</p> <p>19          BY MR. SABA:</p> <p>20          Q     Going back again to the management 21 doing what they were supposed to do with respect to 22 developing potential timelines and with respect to the 23 readiness and key development priorities what did 24 Mr. Carmichael present with respect to Mr. Tuzun and 25 Mr. McHugh regarding their potential timelines and</p>	<p>Page 77</p> <p>1           some personal issues and may have to step down earlier 2 than his desires or the board's desires would have 3 been?</p> <p>4           A     <b>He made reference in executive</b> <b>5 session to the full board that he was looking to</b> <b>6 develop his successor sooner. Now, Marsha or -- who</b> <b>7 was the lead independent director or other directors</b> <b>8 may have had conversations with. I do not know. I</b> <b>9 just know that Greg was feeling we should be really</b> <b>10 developing his successor.</b></p> <p>11          Q     When was the executive session 12 wherein Greg Carmichael indicated that he wanted to 13 develop his successor sooner?</p> <p>14          A     <b>He was always a very unique CEO</b> <b>15 from my experience. Most CEOs never want to let go of</b> <b>16 their power. He was one that even when we were</b> <b>17 looking at M&amp;A transactions if it was for the good of</b> <b>18 the company he said, "I will step down as the CEO. I</b> <b>19 would step down or just be -- serve on the board for</b> <b>20 an interim transition period," quite unique. It was</b> <b>21 refreshing quite frankly. So it wasn't surprising to</b> <b>22 me that if there was someone who felt that way that he</b> <b>23 was always just looking at any alternative and if he</b> <b>24 felt Tim was going to be ready sooner he didn't want</b> <b>25 to hold back Tim nor risk losing Tim because at the</b></p>

<p style="text-align: right;">Page 80</p> <p>1 end of the day the financial services overall, banking      2 in particular, there's been a structural shift that's      3 being disrupted by Fintech, digital, shadow banks,      4 that you -- A strategic leader was going to be the      5 reason Fifth Third could be successful and it's      6 demonstrated. Just look what's going on.</p> <p>7 Tim is getting accolades. We chose      8 the right leader by how the market is performing      9 against what Tim Spence has been executing against and      10 we're making differences that Fifth Third is getting      11 noticed every day, so it's proof that we chose the      12 right person, and for Greg to be willing to want to      13 step down said a lot about he was thinking about the      14 bank first and the success of the bank. So I was very      15 proud to serve on a board with a CEO with that      16 perspective.</p> <p>17 Q You indicated there was an      18 executive session wherein Greg Carmichael specifically      19 indicated he wanted to develop a successor sooner.      20 When did that executive succession occur?</p> <p>21 A <b>When I reference --</b></p> <p>22 MR. CIOFFI: Objection to the form      23 of the question, When did that executive --</p> <p>24 MR. SABA: -- succession occur?      25 MR. CIOFFI: -- succession occur?</p>	<p style="text-align: right;">Page 82</p> <p>1 We're all thinking Tim's going to be the successor.      2 He's moving at a rate faster and he's noticed in the      3 street. He was being written up in -- I think it was      4 American Banker as digital -- for his digital      5 capabilities back in 2018, so he was already being      6 recognized in the community.</p> <p>7 We lost Brian Lamb. You saw what      8 happened when Brian Lamb went to JPMorgan Chase,      9 another great talent. This is an industry where that      10 occurs often and we had a unicorn in Tim Spence. He's      11 like a whiz kid because I am always in awe of his      12 capabilities.</p> <p>13 Q Going -- Going back to the unicorn      14 for a second in terms of him being digital banker of      15 the year --</p> <p>16 A <b>Uh-huh.</b></p> <p>17 Q -- American Banker, is that one of      18 the reasons that you selected him as --</p> <p>19 A <b>No.</b></p> <p>20 Q -- as far as CEO?</p> <p>21 A <b>No. That just validated why I      22 felt -- It's always great when you read something that      23 validates what you're observing.</b></p> <p>24 Q Why did that validate what you were      25 thinking?</p>
<p style="text-align: right;">Page 81</p> <p>1 BY MR. SABA:      2 Q When did that executive --      3 MR. CIOFFI: Discussion?      4 Q -- session --      5 MR. CIOFFI: Discussion about it?      6 MR. SABA: Yeah. He said he had --      7 that it was during --</p> <p>8 BY MR. SABA:      9 Q Do you understand the question?      10 MR. CIOFFI: I don't understand the      11 question.</p> <p>12 A <b>Rephrase your question.</b></p> <p>13 Q You indicated earlier that there      14 was an executive session of the board during which      15 Greg Carmichael indicated he wanted to develop his      16 successor sooner?</p> <p>17 A <b>Because Tim was showing and      18 exhibiting a level of capability that he didn't want      19 to hold him back. I gave an M&amp;A example that he was      20 willing to step down and say -- Most folks only want      21 to do an M&amp;A if they're going to be the overall CEO.      22 I'm trying to give you color about Greg, that Greg was      23 always about the success of the bank first, and by      24 virtue of having that style about him it wasn't      25 surprising to me that he wanted to let the board know.</b></p>	<p style="text-align: right;">Page 83</p> <p>1 A <b>American Banker is a -- is a      2 respected periodical in the banking sector.</b></p> <p>3 Q Do you have any understanding of      4 what the process was for him to be selected as digital      5 banker of the year?</p> <p>6 A <b>I have no idea what the process is,      7 but when you're put on a -- any of the periodicals --      8 He's -- He's written up in the Wall Street Journal.      9 He's continually written up to -- now in his current      10 role. You just have to go do your research on that      11 too. He -- He is -- Quite frankly let's just put it      12 out there. I see him as what Jamie Dimon was like      13 when Jamie Dimon was that age quite frankly. He's      14 amazing. Jamie Dimon was doing the things that      15 Tim Spence is doing except Jamie Dimon wasn't digital      16 so why Tim is a unicorn in my view is he brings the      17 depth and breadth of understanding the competitive      18 landscape of what's going on with the disruption by      19 virtue of Fintech and shadow banks. All due respect      20 to Phil, solid traditional banker, but never heard any      21 of those conversations from Phil of how we stay      22 competitive.</b></p> <p>23 Q So to be fair you did not view Phil      24 as a young Jamie Dimon; correct?</p> <p>25 A <b>Quite frankly --</b></p>

	Page 84		Page 86
1	MR. CIOFFI: Objection to the form of the question.	1	Q Are you aware of any conversation wherein Greg Carmichael indicated to Phil McHugh that Tim Spence was not ready and that Greg Carmichael needed to step down earlier than anticipated and he wanted Phil McHugh to step in as an interim President and CEO?
2	<b>A Quite frankly I don't -- I don't look at anything on age because I would bring in Jamie Dimon if he wanted to work at Fifth Third and Jamie Dimon is my age, 68, so there you go.</b>	2	<b>A No.</b>
3	Q But you view Tim Spence as a young Jamie Dimon; isn't that right?	3	Q Do you know who RHR is?
4	MR. CIOFFI: Objection to the form of the question, asked and answered, but --	4	<b>A Yes.</b>
5	BY MR. SABA:	5	Q Who is RHR?
6	Q Go ahead.	6	<b>A They were the external consultant to provide an external view of what was the candidate slate as well as to assess Tim Spence for readiness as a CEO.</b>
7	MR. CIOFFI: -- you can answer it again if you want.	7	Q Why did Fifth Third retain RHR?
8	BY MR. SABA:	8	<b>A I would not have been the one who would have decided RHR. That would have been most likely the lead independent director in coordination with the CEO and the chair of Human Capital &amp; Compensation, Mike McCallister. That is the role of those folks to do that when you're getting -- just inform the board of who they chose.</b>
9	Q That was your comparison?	9	Q Were you aware that RHR was first retained to assess Tim Spence, Phil McHugh, and Tayfun Tuzun?
10	<b>A I'm using that more to say, "Did you think Jamie Dimon was a talent when he was that age too?" I mean Jamie Dimon is a unique talent.</b>	10	
11	Q All right. Tim Spence was a young Jamie Dimon. Phil McHugh was not a young Jamie Dimon; is that right?	11	
12	MR. CIOFFI: Objection to the form of the question --	12	
13	<b>A I disagree.</b>	13	
14	MR. CIOFFI: -- argumentative.	14	
15	<b>A I disagree. I -- That is not --</b>	15	MR. CIOFFI: Objection to the form of the question, assumes facts not in evidence. If you -- If you know you can answer.
16	Q Are you saying Phil McHugh was a young Jamie Dimon?	16	<b>A My recollection is that it was only Tim Spence because even the board -- That's where I referenced earlier some boards like to have multiple candidates even though if a second and third potential candidate that management offers up is a big distance and gap to what the first potential candidate exhibits -- This board for the reasons I indicated earlier unanimously said off of being informed that there was a decision made, I think, again by Mike McCallister, Marsha, and Greg that just keep it to who they really believe was the CEO successor, and so Tayfun and Phil came off. There was like early, early indicators that they may -- might have been part of the process.</b>
17	<b>A That's not even relevant. Help me understand how that's relevant.</b>	17	Q When did that communication occur?
18	Q You specifically identified Tim Spence as a -- You said, "Let's say it. Let's call it out. Tim Spence is a Jamie Dimon at his -- at his age. He's a young Jamie Dimon."	18	<b>A I don't recall.</b>
19	<b>A Okay. So, yes.</b>	19	Q Was there ever a point in time where you considered Phil McHugh to be a viable candidate for President and CEO of Fifth Third Bank?
20	Q And Phil McHugh is not a young Jamie Dimon; is he?	20	<b>A As I said earlier, no.</b>
21	<b>A He's a solid traditional banker just like I'm a solid traditional CFO. I'm no Jamie Dimon or a young Jamie Dimon either.</b>	21	Q Did you ever communicate to
22	Q My earlier question was whether or not you were aware in August of 2019 that Greg Carmichael indicated that he had some personal issues which might cause him to step down earlier than anticipated?	22	
23	<b>A I am not aware of that.</b>	23	
24	Q Okay. Are you aware of any time that he indicated anything like that?	24	
25	<b>A No.</b>	25	

<p style="text-align: right;">Page 88</p> <p>1 Phil McHugh that he was not a viable candidate for 2 President and CEO of Fifth Third Bank?</p> <p>3     <b>A     No, and that would not have been my</b> 4     <b>role.</b></p> <p>5     Q     Did anybody ever communicate to 6     Phil McHugh that he was not a viable candidate for 7     President and/or CEO of Fifth Third Bank?</p> <p>8         MR. CIOFFI: Objection to the form 9         of the question, lack of foundation. If -- 10       If -- If you know of anybody ever said that 11       to --</p> <p>12         <b>A     No.</b></p> <p>13         MR. CIOFFI: -- Phil you can answer 14       the question.</p> <p>15         <b>A     I do not know.</b></p> <p>16         Q     You were in attendance at the 17     September, 2020, board meeting; is that correct?</p> <p>18         <b>A     I believe I was. There was one</b> 19       <b>meeting I missed post surgery so I am not sure if that</b> 20       <b>might have been it. It was a September meeting. You</b> 21       <b>would have to check the minutes to see if I was there.</b></p> <p>22         Q     You missed a meeting on June 19th, 23     2017. Is that the meeting you're referring to?</p> <p>24         <b>A     No, I didn't miss a June meeting.</b></p> <p>25         <b>It would have been a September. It was during a</b></p>	<p style="text-align: right;">Page 90</p> <p>1             <b>MR. SABA:</b> We can go off the 2     record.</p> <p>3             <b>THE VIDEOGRAPHER:</b> We are off the 4     record 12:06.</p> <p>5         (Deposition stood in recess at 6       12:06 p.m.)</p> <p>7         (Deposition reconvened at 8       12:24 p.m.)</p> <p>9         <b>THE VIDEOGRAPHER:</b> We are back on 10     the record. This is Media 3 of today's 11     deposition. The time is 12:24.</p> <p>12         <b>BY MR. SABA:</b></p> <p>13         Q     Ms. Mallesch, were you aware that 14     Fifth Third filed a counterclaim against Phil McHugh 15     for filing his age discrimination claim?</p> <p>16         <b>A     I'm aware by what I do for having</b> 17       <b>to review all claims to the organization as audit</b> 18       <b>chair, yes.</b></p> <p>19         Q     And are you aware that it's 20     unlawful to retaliate against somebody for making a 21     claim of discrimination?</p> <p>22         MR. CIOFFI: Objection to the form 23       of the question. That's not what the 24     counterclaim does. It assumes facts not in 25     evidence. It assumes a legal -- incorrect</p>
<p style="text-align: right;">Page 89</p> <p>1         <b>strategy session I was post surgery. I was in the</b> 2       <b>first day but came back too soon so I had to leave.</b></p> <p>3         Q     Were you present for part of the 4     meeting?</p> <p>5         <b>A     I was present the first day of the</b> 6       <b>meeting, but the strategy section was the second day.</b> 7       <b>Executive session I would have missed on any follow-up</b> 8       <b>on CEO succession.</b></p> <p>9         Q     Do you recall if that was in 2019 10     or 2020?</p> <p>11         <b>A     Well, it wasn't '19. I was</b> 12       <b>definitely there in '19. It was either '20 or '21 and</b> 13       <b>I am just failing to remember what September it was</b> 14       <b>that I missed.</b></p> <p>15         Q     Do you recall a meeting in 16     September of 2020 during which Greg Carmichael 17     indicated that Phil McHugh may be at risk of leave 18     with -- of leaving with Tim Spence's promotion to 19     President?</p> <p>20         <b>A     No.</b></p> <p>21         Q     Did you ever have a conversation 22     with Greg Carmichael wherein he indicated that 23     Phil McHugh would be at risk of leaving with 24     Tim Spence's promotion to President?</p> <p>25         <b>A     No.</b></p>	<p style="text-align: right;">Page 91</p> <p>1             legal conclusion. But you may answer if you 2     can.</p> <p>3         <b>A     I'm not a lawyer, so you would know</b> 4       <b>that better than me.</b></p> <p>5         Q     Do you have any understanding of 6     that?</p> <p>7         MR. CIOFFI: Objection. She 8     answered the question.</p> <p>9         <b>A     I stated my answer.</b></p> <p>10         Q     Okay. I am asking for your -- to 11     the extent of your personal understanding do you have 12     any understanding of whether or not it's appropriate 13     to retaliate against an employee who brings a claim of 14     discrimination?</p> <p>15         MR. CIOFFI: Objection, same 16       objection. It's not what the counterclaim 17     does.</p> <p>18         <b>A     I know there was a claim filed. I</b> 19       <b>observed it. I chat with the management about it and</b> 20       <b>that's it.</b></p> <p>21         Q     No. I am just asking if you have 22     an understanding of whether or not it's appropriate to 23     bring -- to retaliate against an employee who brings a 24     claim of discrimination?</p> <p>25         MR. CIOFFI: Objection, asked and</p>

<p style="text-align: right;">Page 92</p> <p>1        answered. She said she's not a lawyer.      2 <b>BY MR. SABA:</b>      3        Q     I'm asking for your understanding.      4        A     <b>I am standing by my prior answer.</b>      5        Q     Your answer was you're not a      6        lawyer. I'm asking to the extent of your knowledge do      7        you have any understanding whether or not it's      8        appropriate to retaliate against --      9        A     <b>No.</b>      10      Q     -- an employee?      11      You don't have an understanding?      12      A     <b>I don't have an understanding of your question.</b>      13      Q     Okay. You don't know whether or      14     not it's appropriate to retaliate against an employee      15     who brings a claim of discrimination?      16      A     <b>I have not observed any retaliation, so I stand by my answer.</b>      17      Q     No, that's not my question. I am      18     not asking if you have observed any retaliation. I am      19     asking whether or not you have any understanding      20     whether it's appropriate to retaliate against an      21     employee who brings a claim for discrimination?      22      MR. CIOFFI: Same objection. Now      23     that you ask it the fourth time you're      24      25</p>	<p style="text-align: right;">Page 94</p> <p>1        <b>BY MR. SABA:</b>      2        Q     What is your knowledge?      3        MR. CIOFFI: Wait a minute. Let me      4        pose my objection. Objection to the form of      5        the question in that it's delivered as a      6        hypothetical and speculation with absolutely      7        no context.      8        MR. SABA: It's not a hypothetical      9        and it's not speculation.      10      MR. CIOFFI: Sure, it is.      11      <b>BY MR. SABA:</b>      12      Q     Go ahead. What is your      13     understanding?      14      A     <b>I stand by my prior response to you because I am not understanding how -- why this is relevant.</b>      15      Q     I am going to ask you the question      16     again. It's very simple --      17      A     <b>Uh-huh.</b>      18      Q     -- all right? You indicated before      19     you do have an understanding whether or not it's      20     appropriate to retaliate against an employee who      21     brings a claim for discrimination. What is your      22     understanding?      23      MR. CIOFFI: Objection, same      24      25</p>
<p style="text-align: right;">Page 93</p> <p>1        becoming argumentative.      2 <b>BY MR. SABA:</b>      3        Q     Go ahead.      4        A     <b>Repeat the question.</b>      5        Q     Yes. I am asking whether or not      6        you have any understanding whether or not it is      7        appropriate to retaliate against an employee who      8        brings a claim of discrimination?      9        A     <b>I don't view that it was retaliation from how the form of that document was written, so you have to help me understand that.</b>      10      Q     I am not asking about the document.      11     I am asking about your understanding.      12      A     <b>Oh, but you referenced the document.</b>      13      Q     That was a prior question. My      14     question --      15      A     <b>Oh.</b>      16      Q     -- generally speaking to the extent      17     of your knowledge, your understanding, do you have any      18     understanding whether or not it's appropriate to      19     retaliate against an employee who brings a claim of      20     discrimination?      21      A     <b>I do.</b>      22      MR. CIOFFI: Objection to the form.</p>	<p style="text-align: right;">Page 95</p> <p>1        objection.      2        A     <b>Would you just phrase the question more simply? You're really making a very long-winded question. Phrase the question -- Are you asking do I think it's appropriate to retaliate against someone --</b>      3        Q     For bringing --      4        A     <b>-- on anything?</b>      5        Q     For bringing a claim of      6        discrimination.      7        MR. CIOFFI: Objection, asked and      8        answered --      9        <b>BY MR. SABA:</b>      10      Q     That's -- That's my question.      11      MR. CIOFFI: -- argumentative.      12      <b>BY MR. SABA:</b>      13      Q     Is that appropriate?      14      A     <b>It's not appropriate, but I haven't seen anything that should suggest that, so it's not appropriate, of course. That's of values.</b>      15      MR. SABA: Okay. That's all I have      16     at this time. We'll continue in progress      17     with respect to the other issues and include      18     that in the questions.      19      MR. CIOFFI: Again we'll address      20     that at the end. As you know our position is</p>

	Page 96		Page 98
1	you have no right to continue the deposition.	1	would you, please?
2	You have one chance to depose this witness	2	<b>A I'm there.</b>
3	and that's it, but we'll take that up with	3	Q Did the discussion as reflected in
4	the Court.	4	the minutes, Exhibit No. 5, center around this
5	MR. CIOFFI: Ms. Mallesch, I have a	5	particular CEO succession chart?
6	few questions for you.	6	<b>A It did.</b>
7	THE WITNESS: Sure.	7	Q And as a result were the
8	EXAMINATION	8	discussions that potential emergency successors were
9	BY MR. CIOFFI:	9	Tayfun Tuzun, Phil McHugh, and a board member?
10	Q If you could turn to Exhibit No. 5,	10	MR. SABA: Continuing objection.
11	please.	11	<b>A Correct.</b>
12	<b>A I'm there.</b>	12	Q And were those the candidates
13	Q If you turn to Page 2 and the full	13	presented at the board meeting as potential emergency
14	paragraph at the beginning -- in the middle of the	14	successors?
15	page which says, "Thereafter, Mr. Carmichael and	15	MR. SABA: Objection.
16	Mr. Shaffer initiated a review" -- Do you see that?	16	<b>A Correct.</b>
17	<b>A I do.</b>	17	Q In terms of the permanent CEO
18	Q And go ahead and read those first	18	succession who was presented as a candidate or
19	two sentences if you would, please, into the record.	19	candidates?
20	<b>A "Thereafter, Mr. Carmichael and</b>	20	<b>A Tim Spence with Brian Lamb with a</b>
21	<b>Mr. Shaffer initiated a review of potential succession</b>	21	<b>much longer runway as suggested here of seven plus</b>
22	<b>timelines and candidates for the CEO position. They</b>	22	<b>years.</b>
23	<b>reviewed top succession candidates, including</b>	23	Q At any time at the board meeting
24	<b>Mr. Spence, and discussed the potential timelines for</b>	24	reflected in Exhibit No. 5 was Tayfun Tuzun,
25	<b>their readiness and key development priorities for</b>	25	Phil McHugh, or anyone else other than Tim Spence
	Page 97		Page 99
1	each such candidate."	1	presented as a permanent CEO successor?
2	Q Did these discussions include	2	MR. SABA: Objection, asked and
3	discussions about permanent CEO succession and also	3	answered.
4	emergency CEO succession?	4	<b>A No.</b>
5	MR. SABA: Objection, form of the	5	Q I am going to ask you another
6	question, asked and answered. Go ahead. You	6	question. So we're finished with those exhibits. As
7	can answer.	7	a board member when you were discussing and
8	<b>A Yes, it was both.</b>	8	deliberating as to who should succeed Greg Carmichael
9	Q Who was presented as a candidate	9	as President and CEO did you ever consider age as a
10	for Chief Executive Officer as a permanent position,	10	factor, age of that potential successor as a factor in
11	as a permanent successor?	11	your discussions and deliberations?
12	MR. SABA: Objection, asked and	12	MR. SABA: Objection.
13	answered.	13	<b>A Never.</b>
14	<b>A Tim Spence.</b>	14	Q What did you consider?
15	Q Were there candidates presented as	15	<b>A As I talked about earlier the four</b>
16	potential successors on an emergency or interim basis?	16	<b>quadrants. I'm always evaluating every leader in how</b>
17	MR. SABA: Continuing objection.	17	<b>they are meeting the capabilities of oversight,</b>
18	<b>A Yes.</b>	18	<b>hindsight, foresight, and insight, and Tim Spence</b>
19	Q And who were those candidates?	19	<b>checked all the boxes, and then on top of it by virtue</b>
20	<b>A As the document we reviewed earlier</b>	20	<b>of what we're facing strategically in an environment</b>
21	<b>Tayfun and Phil.</b>	21	<b>of a huge competition from Fintech, digital, and</b>
22	Q The earlier document is Exhibit 4.	22	<b>shadow banking we needed someone who really understood</b>
23	If you look at that, please.	23	<b>what was the current environment and how we could</b>
24	<b>A I'm there.</b>	24	<b>succeed in the current environment, so Tim Spence</b>
25	Q And look at the Bates No. 1142;	25	<b>checked all the boxes there.</b>

<p style="text-align: right;">Page 100</p> <p>1 Q In your discussions and 2 deliberations over who should succeed Greg Carmichael 3 as President and CEO you discussed that topic with 4 other board members; is that correct?</p> <p>5 A <b>Correct.</b></p> <p>6 MR. SABA: Objection.</p> <p>7 BY MR. CIOFFI:</p> <p>8 Q In those discussions at any time 9 did any board member suggest that age of the successor 10 should be a factor in making the determination as to 11 Greg Carmichael's successor?</p> <p>12 MR. SABA: Objection.</p> <p>13 A <b>No.</b></p> <p>14 Q In these discussions about who 15 should succeed Greg Carmichael -- And I want to direct 16 you specifically to the time frame of the second half 17 of 2019 through October of 2020 -- did you ever form 18 an opinion as to whether Phil McHugh was qualified or 19 not qualified to be President or CEO?</p> <p>20 A <b>I had by the time as I indicated earlier by virtue of serving on the board since 2016 by 2019 I viewed Phil as a capable traditional banker who added value at the bank. Regretfully we're sitting here because he's not self-aware to equally understand his strengths and his developments, so let</b></p>	<p style="text-align: right;">Page 102</p> <p>1 Q In the exercise of your business 2 judgment as a board member was Phil McHugh qualified 3 or not qualified to be President or CEO?</p> <p>4 A <b>He was not qualified.</b></p> <p>5 Q Did you discuss that particular 6 issue with any other board members?</p> <p>7 A <b>No, because the board was unanimous in pursuing Tim Spence as development, so, no.</b></p> <p>8 Q Did any other board members in your 9 discussions with them express a view as to whether 10 Tim Spence was qualified -- or -- Excuse me. Strike 11 that -- as to whether Phil McHugh was qualified or not 12 qualified to be --</p> <p>13 A <b>No.</b></p> <p>14 Q -- either President or CEO?</p> <p>15 A <b>We --</b></p> <p>16 MR. SABA: Objection.</p> <p>17 A <b>We respected him, his capabilities and knowledge, his deep internal knowledge of Fifth Third, but did not see him as anything more than a utility player within the organization.</b></p> <p>18 Q Was that the consensus of the board 19 that he was not qualified to be President or CEO?</p> <p>20 MR. SABA: Objection.</p> <p>21 A <b>That would be my understanding</b></p>
<p style="text-align: right;">Page 101</p> <p>1 me use an example from my own personal career. 2 I was on one of my boards by virtue 3 of my insurance background was asked to be considered 4 to be the CEO by another board candidate when we were 5 doing CEO succession. I said, "I'm honored that you 6 think I have the capabilities, but for what we're 7 facing," because all financial services are facing the 8 disruption that's occurring within -- by virtue of 9 Fintech and digital, all digital capabilities, I said, 10 "I'm a traditional CFO that happens to know Property/ 11 Casualty Insurance. That does not make me a qualified 12 candidate. I could do the operating levers. If we 13 were ever in an emergency and needed someone just to 14 keep the lights on I can do that."</p> <p>15 It's regretful that Phil did not 16 have that same self-awareness because he was highly 17 valued, he chose to leave, he was highly compensated 18 which would have been reflected in the proxy statement 19 for showing the prestigiousness of his position 20 because I believe his ego still wanted to be the CEO, 21 and it's really about the good for the company. You 22 have to -- As I indicated even Greg Carmichael was 23 willing to say, "I'll step down," because we were 24 seeing a great talent ready -- starting to show ready now.</p>	<p style="text-align: right;">Page 103</p> <p>1 since no one else voiced strong vocal support for Phil 2 being CEO.</p> <p>3 MR. CIOFFI: I have no further 4 questions.</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. SABA:</p> <p>7 Q Ms. Mallesch, you indicated that -- 8 you made the comment that Phil's ego wanted to be CEO; 9 is that correct?</p> <p>10 A <b>That's my opinion.</b></p> <p>11 Q Okay. And in your opinion you 12 could understand why somebody particularly if they had 13 worked at a bank for 30 plus years would want to be 14 CEO of the bank; correct?</p> <p>15 A <b>That makes no sense since the only role -- It's the board's role to choose the CEO. It's not for someone to think, I'm ready to be CEO.</b></p> <p>16 Q No. My --</p> <p>17 A <b>That's not the corporate world we live in.</b></p> <p>18 Q No. My question was not whether or 19 not they were ready. My question is you could 20 understand if somebody worked for a bank for 31 years 21 that they would have the desire to be CEO?</p> <p>22 A <b>That sounds like a union job to me</b></p>

<p style="text-align: right;">Page 104</p> <p>1   <b>which I participated early in my career in the medical 2 profession and only -- the only jobs that get you 3 anything in seniority is in a union job, not in 4 Corporate America.</b></p> <p>5   Q    That -- That wasn't my question. 6 My question is whether or not you could understand why 7 somebody's worked at a company for that long would at 8 least have the desire to be CEO?</p> <p>9   MR. CIOFFI: Objection. She 10    answered your question.</p> <p>11   <b>A    I disagree.</b></p> <p>12   MR. CIOFFI: You didn't like the 13    answer, but --</p> <p>14   <b>BY MR. SABA:</b></p> <p>15   Q    You don't -- You don't understand 16    that desire?</p> <p>17   <b>A    I -- I think you got to -- It shows 18 lack of self-awareness quite frankly.</b></p> <p>19   Q    And whether it shows lack of 20    self-awareness you believe that Phil McHugh had the 21    desire to be CEO?</p> <p>22   MR. CIOFFI: Objection, lack of 23    foundation.</p> <p>24   <b>A    I think I answered the question.</b></p> <p>25   MR. CIOFFI: If you know what his</p>	<p style="text-align: right;">Page 106</p> <p>1   <b>because anyone who's really aspiring to be CEO will 2 show that they have a passion and energy around their 3 business that's more than reading off their slides.</b></p> <p>4   Q    Okay. That's my question. It's 5 based on his presentation style that you interpreted 6 that he didn't want to be CEO; is that right?</p> <p>7   MR. CIOFFI: Objection --</p> <p>8   <b>A    I'm using my --</b></p> <p>9   MR. CIOFFI: -- form of the 10    question. You're misstating her testimony. 11   Her answer stands. If you -- If you have a 12    further answer you can give it.</p> <p>13   <b>BY MR. SABA:</b></p> <p>14   Q    No. I'm trying to understand your 15    testimony. You said it was not speaking to you at 16    cocktail parties and his presentation style would be 17    the two things that would indicate to you that he did 18    not want to be CEO; is that correct?</p> <p>19   MR. CIOFFI: Objection. She never 20    used the word "style". She talked about 21    substance of the presentation. You're 22    mischaracterizing it and it's argumentative.</p> <p>23   <b>MR. SABA: Well, I think that's --</b> 24   <b>that's your addition to testimony.</b></p>
<p style="text-align: right;">Page 105</p> <p>1   <b>desires are you -- you can answer.</b></p> <p>2   <b>A    I answered the question.</b></p> <p>3   Q    No, you didn't.</p> <p>4   MR. CIOFFI: Objection. Wait. 5 It's argumentative. She answered the 6 question. Ask another question if you want.</p> <p>7   MR. SABA: Sure.</p> <p>8   <b>BY MR. SABA:</b></p> <p>9   Q    With respect to Phil McHugh based 10    on your evaluation of his ego did you have an 11    understanding that he wanted to be the CEO of 12    Fifth Third Bank?</p> <p>13   <b>A    No, I didn't actually because if he 14 did he might have pursued chatting with me during 15 cocktail hours or presented in a way that showed that 16 he was strategic and able to articulate and paint a 17 picture of his business beyond reading off his slides. 18 Actually it showed somebody that wasn't aspirational 19 to a CEO which is why I'm very shocked we're all 20 sitting here today because I never thought he was 21 aspiring to be CEO.</b></p> <p>22   Q    And that's based just on the 23 presentations you saw at the board and not speaking to 24 you at cocktail parties; is that right?</p> <p>25   <b>A    It's based off of how he presented</b></p>	<p style="text-align: right;">Page 107</p> <p>1   <b>BY MR. SABA:</b></p> <p>2   Q    But go ahead. I'm asking -- 3 Clarify your answer,</p> <p>4   <b>A    Again I think you're putting 5 subjection into what I just said. I'm using as 6 examples of someone showing they're aspiring to be CEO 7 that you're asking me about that it sounds to me you 8 view just years of working in a company means you want 9 to be CEO. That's how I heard your question.</b></p> <p>10   Q    No. I am asking you the question. 11 You said in your mind you think Phil McHugh did not 12 want to be CEO; is that right?</p> <p>13   <b>A    I am shocked. I never -- He never 14 at all indicated he was interested in being CEO from 15 any interaction with him.</b></p> <p>16   Q    That you had with him?</p> <p>17   <b>A    That I had with him.</b></p> <p>18   Q    Okay. And -- And that's what I'm 19 trying to understand. That's based on his 20 presentations and the one time you all sat at 21 dinner --</p> <p>22   <b>A    Correct.</b></p> <p>23   Q   -- is that correct?</p> <p>24   <b>A    Correct.</b></p> <p>25   Q   Okay. You made the comment that</p>

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1 Phil McHugh was going to be in the proxy statements;  
2 is that right?

3       **A By one of the top highly  
4 compensated individuals I believe the salary was over  
5 \$2 million a year, that he would have been in the --  
6 If he accepted the position on the restructuring that  
7 was occurring he would have been in the proxy.**

8       Q He would have been in the proxy  
9 either way; isn't that right?

10      **A I don't recall. All I know is that  
11 it was communicated that he would be one of the top  
12 executives in the organization.**

13           MR. SABA: That's all I have.

14           Continued in progress.

15           MR. CIOFFI: Again we object to  
16 your attempt to continue in progress. No  
17 further questions. The witness will read and  
18 sign the deposition.

19           MR. SABA: Okay. Thank you.

20           THE WITNESS: Thank you.

21           THE VIDEOGRAPHER: We are off the  
22 record at 12:42.

23

24

25

EILEEN A. MALLE SCH

DATE

(DEPOSITION CONCLUDED AT 12:42 P.M.)

## 1 C E R T I F I C A T E

2 STATE OF OHIO :  
3 COUNTY OF BUTLER : SS:

4 I, Pamela L. Jackson, a duly qualified and  
5 commissioned notary public in and for the State of  
6 Ohio, do hereby certify that prior to the giving of  
7 her deposition, the within named EILEEN A. MALLESCHE,  
8 was by me first duly sworn to testify to the truth,  
9 the whole truth, and nothing but the truth; that the  
10 foregoing pages constitute a true and correct  
11 transcript of testimony given at said time and place  
12 by said deponent; that said deposition was taken by me  
13 in stenotypy and transcribed under my supervision;  
14 that I am neither a relative of nor attorney for any  
15 of the parties to this litigation, nor relative of nor  
16 employee of any of their counsel, have no interest  
17 whatsoever in the result of this litigation, and am  
18 not, nor is the court reporting firm for which I am  
19 affiliated, under a contract as defined in Civil Rule  
20 28(D).

21 IN WITNESS WHEREOF, I hereunto set my  
22 hand and official seal of office at Hamilton, Ohio,  
23 this 26th day of July, 2024.

24 \_\_\_\_\_  
25 Commission Expires 11/17/28

## 1 1 DEPOSITION ERRATA SHEET

2 Date Taken: July 10, 2024

3 Case Caption: PHILIP R. MCHUGH

4 vs. FIFTH THIRD BANCORP, et al.

## 5 DECLARATION UNDER PENALTY OF PERJURY

6 I declare under penalty of perjury

7 that I have read the entire transcript of

8 my Deposition taken in the captioned matter

9 or the same has been read to me, and

10 the same is true and accurate, save and

11 except for changes and/or corrections, if

12 any, as indicated by me on the DEPOSITION

13 ERRATA SHEET hereof, with the understanding

14 that I offer these changes as if still under

15 oath.

16 Signed on the \_\_\_\_\_ day of

17 \_\_\_\_\_, 20\_\_\_\_\_.  
18 \_\_\_\_\_

19 EILEEN A. MALLESCH

## 1 2 DEPOSITION ERRATA SHEET

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23 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

24 EILEEN A. MALLE SCH

25 \_\_\_\_\_

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23      SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

24      EILEEN A. MALLE SCH

25      \_\_\_\_\_

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